TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 5

HOTEL EMPLOYEES UNION, LOCAL NO. 255, ET AL., PETITIONERS,

vs.

SAX ENTERPRISES, INC.; LEEVLANS CORPORATION; R. S. LEVY, DANIEL LIFTER AND J. S. LANSBURGH, AS TRUSTEE; ET AL.

No. 6

HOTEL EMPLOYEES UNION, LOCAL NO. 255, ET AL., PETITIONERS,

vs.

HARRY LEVY, ET AL., DOING BUSINESS AS SHERRY FRONTENAC HOTEL, STUYVESANT CORPORATION, ABE ALLENBERG, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 5 PETITION FOR CERTIORARI FILED AUGUST 12, 1957
No. 6 PETITION FOR CERTIORARI FILED AUGUST 12, 1957
CERTIORARI GRANTED DECEMBER 16, 1957

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[fol. A]

IN THE SUPREME COURT OF FLORIDA

Case No. 28,239

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A.F. OF L.), ET AL,
Appellants

v.

SAX ENTERPRISES, INC., Appellee

Transcript of Record—Filed April 5, 1956

[fol. 1]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA.

In Chancery. No. 178554

SAX ENTERPRISES, INC., Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, (A.F. OF L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

BILL OF COMPLAINT FOR INJUNCTION AND OTHER RELIEF—
Filed April 14, 1955

Comes Now the plaintiff, Sax Enterprises, Inc., by its undersigned attorneys, and brings this, its Bill of Complaint for Injunction and Other Relief against the defendants, Hotel Employees Union, Local No. 255, (A.F. of L.) and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, and for such complaint, plaintiff alleges:

I.

Plaintiff is a duly organized corporation with its principal place of business in Miami Beach, Dade County, Florida.

Defendant, Hotel Employees Union, Local No. 255, (A.F. of L.) is a labor organization within the intent and purview of the laws of the State of Florida; Albert H. Berlin, Clarence L. Smith and Henry Mischel, are each residents of Dade County, Florida, and are each over the age of 21 years; said individual defendants, and each of them, are the duly authorized business agents and officers of said labor organization.

[fol. 2]

II.

Plaintiff is the owner of an ocean front hotel consisting of approximately 200 rooms, located at 3201 Collins Avenue, Miami Beach, Florida, and known as the Saxony Hotel. This hotel was constructed and equipped by the plaintiff at a total cost to it of over $5,000,000.00. Said hotel has been in operation for approximately 7 years, and plaintiff operates in connection therewith, a cocktail lounge, dining room, coffee shop, swimming pool, and other various facilities usual or necessary in the operation of a first-class hotel. Plaintiff's hotel has enjoyed the very finest reputation, and it has earned an excellent and valuable good will. The plaintiff's hotel business has become lucrative. The Saxony is recognized as one of the leading ocean front hotels in the Miami Beach area, and has an enviable nation-wide reputation. It caters to the public by maintaining a dignified atmosphere, serving only the highest grades of foods and beverages, and by rendering superlative service to its patrons and guests.

III.

Employed at plaintiff's hotel are approximately ..... people, who perform services as cooks, waiters, bell boys, maids, elevator operators, and other similar duties normally required to operate and maintain a first-class hotel. The Plaintiff has had no labor dispute with its employees in regard to wages, working conditions or any other phase of

employer-employee labor relationship existing between the plaintiff and its employees. The plaintiff has enjoyed the most cordial labor relations with its employees, and has at all times afforded to its employees a satisfactory standard of pay and working conditions. Plaintiff has received no complaints from its employees in reference to wages, hours, [fol. 3] or working conditions, and is wholly unaware of any labor dispute of any nature, character or description existing between it and its employees.

IV.

The plaintiff believes and is informed that sometime early in 1955, one or two carpet-bagger labor organizers arrived in Miami Beach with the announced intention of stirring up labor discord between employers and employees at several of the hotels on Miami Beach, with the purpose in mind of creating for themselves, a lucrative labor organization by which said carpet-bagger organizers could reap a harvest of money from the employees of the hotels on Miami Beach through dues which the said organizers expected to charge said employees in the event they could inveigle said employees to join with said organizers in creating a labor union. These northern organizers announced that they intended to form a labor organization, and they have named their alleged organization, Hotel Employees Union, Local No. 255, A.F. of L. Said union had no members except the two professionals who arrived with the announcement that they constituted said labor organization.

Since said time, the two organizers, one of whom is David Herman, and the other is one of the defendants, Albert H. Berlin, have utilized all the pressure tactics known to labor organizers to force and intimidate the employees of the plaintiff to become members of said labor organization. Their efforts in enlisting membership has been a distinct failure, so the said professionals determined to place pressure, intimidation and threats upon the hotel owners, in order to force said hotel owners through economic sanctions, to sign contracts with the said alleged organization, and thus use said contracts as a basis to force the employees of the hotels to become members of said alleged union.
[fol. 4] To this end, said David Herman contacted Sol

Cohen, president of the Miami Beach Hotel Owners Association, and demanded that the said Cohen negotiate with and line up all of the owners of the first class ocean front hotels on Miami Beach, to execute labor contracts with the said alleged union, thus recognizing said union as representing the employees of the said hotels, and in this fashion, to enable the said union to procure membership among the employees of said hotels. Said Herman threatened Mr. Cohen by stating that unless the Hotel Association actively enlisted the hotel owners to join with the said union by giving it contracts as aforesaid, that the said David Herman would, through economic sanction such as picket lines around said hotels, cause them great economic loss, and thus force them, through such economic loss and pressure, to give to the said union contracts covering the employees in said hotels, who were not, in fact, members of or represented by the said alleged union in any fashion whatsoever. The Miami Beach Hotel Owners Association, and its president, has no power or authority to represent the owners of the individual hotels in reference to any labor matters involving the owners of any particular hotel.

V.

The plaintiff has had no dealings whatever with any members of the Hotel Employees Union, Local No. 255, A.F. of L. Said union has never sought to negotiate with the plaintiff as the representative of plaintiff's employees; in fact, Local No. 255 does not represent the vast majority of the plaintiff's employees. No labor controversy or negotiations in reference to any labor dispute has ever been instituted, inaugurated, or carried on between the plaintiff and the said alleged union, and the said union has never sought to bargain with the plaintiff as the alleged representative of plaintiff's employees, and plaintiff alleges that the said union has never been authorized by the vast ma-
[fol. 5] jority of its employees to represent them.

VI.

The plaintiff has never refused to recognize the defendant union, and has never refused to negotiate with said union;

the plaintiff has never been requested by the said union to negotiate with it, and has never been advised by the said union that the union is the bargaining agent for plaintiff's employees, nor has the plaintiff been advised by said union that it is the labor organization representing plaintiff's employees. In truth and in fact, no demand or grievance of any nature whatsoever of the plaintiff's employees has, up to the present time, been made of or placed before the plaintiff, its officers or agents.

Notwithstanding, said union, at 6:00 o'clock in the morning on Wednesday, April 13, 1955, placed a picket line consisting of six or more pickets in front of the plaintiff's place of business, and each of said pickets in said line carried a placard or poster which falsely and fraudulently alleged that the plaintiff had refused to negotiate with the defendant union. Each of said placards carried the following words:

> "This hotel refused to negotiate with Hotel Employees Union, Local #255, American Federation of Labor, 1575 Washington Avenue Miami Beach".

Such representation made by said union is false and untrue, and the said union knows that the said statements are false and untrue. Said statements are made for the purpose of deceiving the public. The picket line was placed around the plaintiff's place of business for an unlawful and illegal purpose in that the defendant union is carrying out its threat to the president of the Miami Beach Hotel Owners Association by placing economic pressure on the plaintiff, thereby seeking to cause the plaintiff, by loss of revenue [fol. 6] thus occasioned, to execute a labor contract with the said union. This conduct of the said defendant union is unlawful, and is contrary to the Constitution and the Laws of the State of Florida, in that the said defendant union has never been certified to the plaintiff as the lawful bargaining agent of the plaintiff's employees, and said union has never approached the plaintiff seeking to bargain with plaintiff as the authorized bargaining agent of the plaintiff's employees, and in that no demand for collective bargaining has been made by said union upon the plaintiff.

Thus, the defendant union, through its unlawful conduct, seeks to force the plaintiff to execute a contract with it in order that said union might use the said contract to coerce and force plaintiff's employees to become members of said union.

VII.

On Tuesday evening, April 12, 1955, the defendants called a meeting of employees of the plaintiff hotel, but at said meeting defendants were unable to procure the presence of a majority of plaintiff's employees. Notwithstanding this fact, defendants urged some of plaintiff's employees to strike, walk out, and cease work at the plaintiff's place of business, and at the said meeting enlisted an agreement from a small minority of plaintiff's employees to strike and cease work on the following morning. This conduct on the part of defendants was unlawful and directly in conflict with the provisions of §447.09, sub-paragraph 3, Florida Statutes, in that their agreement to strike and cease work was not authorized by a majority vote of the plaintiff's employees to be governed thereby, and there was no election by secret ballot, as provided by §447.09, sub-paragraph 4, of Florida Statutes.

VIII.

On the morning of April 13, 1955, the defendants and their henchmen, congregated at the entrance of the plain-
[fol. 7] tiff's place of business in large numbers, and as a majority of plaintiff's loyal employees arrived for work, each was accosted by the group and urged to join the defendants' strike movement. Some of the employees were threatened if they did not cease to work, and many of them were intimidated by defendants and their associates, agents and servants. As a matter of fact, the pickets have beaten some of the employees who returned to work, and several employees have received innumerable anonymous telephone calls of threats of all manner of bodily harm and injury to their person, should they return to the plaintiff's place of business. Most of the plaintiff's employees who refused to attend work on April 13, 1955, did so because of coercion

and intimidation placed upon them by the defendants, and the large number of persons they had gathered at the entrance to the plaintiff's place of business in an effort to discourage and threaten plaintiff's employees as they arrived. All of this was unlawful and contrary to the provisions of §447.09, sub-section 11, Florida Statutes.

IX.

The defendant union is maintaining the picket line around the premises operated by the plaintiff; said picketing is unlawful and is in violation of §447.09, sub-section 13, Florida Statutes, in that the said union maintains more than six pickets in the short space surrounding the plaintiff's place of business. Said pickets have not engaged in peaceful or reasonable picketing, and the same has become unlawful in that the pickets maintaining the picket line are attempting to stop patrons of plaintiff's hotel from entering or leaving the premises, and are using abusive and obscene language, and are harassing and threatening the plaintiff's patrons and guests.

[fol. 8]

X.

The picket banners carried by said pickets make false, unlawful, and fraudulent statements, in that said banners charge the plaintiff with refusing to negotiate with the defendant union, although the said union knows the statements to be untrue and false. Thus, the said union through false and misleading picket banners, attempts to induce guests and patrons of the plaintiff's hotel to leave, and through such fraudulent misrepresentations, defendants seek to destroy the plaintiff's business and injure the plaintiff in the operation of its business.

XI.

By reason of the unlawful conduct of the defendants, members of the public are being deterred and stopped from patronizing the plaintiff's place of business, which is causing plaintiff irreparable loss and damage. There is no method or means by which the exact loss may be deter-

mined and there is no method or means of determining the full damaged (sic) caused by such false and fraudulent conduct of the said defendant union.

XII.

The defendant union, and its representatives, threw up its picket line without notice or opportunity for the plaintiff to present its cause to the Court to determine the right of the union to cause plaintiff the damage it is presently suffering. Plaintiff is entitled to restoration of status quo ante by temporary injunction until such time as the Court may declare and determine whether of (sic) not the union is entitled to engage upon the said conduct, which is aimed at destroying the plaintiff's business.

Forasmuch, Therefore, as plaintiff is without remedy in the premises, save and except in a Court of Equity, and to the end that justice may be done, plaintiff prays:

[fol. 9] (a) That this Court temporarily enjoin and restrain the defendant union forthwith from maintaining said pickets or picket line at the plaintiff's place of business, and that the Court restore to plaintiff its status quo ante, pending a determination of the right of the defendant union to picket the plaintiff's business.

(b) That this Court temporarily enjoin and restrain the defendant union, and its agents, officers, representatives, servants and employees, including the defendants, Albert H. Berlin, Clarence L. Smith and Henry Mischel, from picketing or causing to be picketed or aiding and abetting in the picketing or authorizing the picketing of plaintiff's place of business, or of advertising or publishing any false and scandalous statements in reference to the plaintiff's business, or the plaintiff corporation, or its officers, agents, representatives and employees, or by any act or method of boycotting or injuring the same, either by picketing or otherwise.

(c) That this Court make such injunctions permanent upon final hearing.

(d) That this Court grant such other and further relief as to it may seem meet and proper.

Sax Enterprises Inc., by George E. Fox, Plaintiff.

Sibley & Davis, 605 Lincoln Road, Miami Beach, Florida, Attorneys for Plaintiff, by Marion E. Sibley, Of Counsel.

[fol. 10] *Duly sworn to by George E. Fox, jurat omitted in printing.*

[fol. 11]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

AMENDMENT TO BILL OF COMPLAINT FOR INJUNCTION AND OTHER RELIEF—Filed April 27, 1955

Comes Now the Plaintiff, Sax Enterprises, Inc., by its undersigned attorneys, and files this, its Amendment to its Bill of Complaint for Injunction and Other Relief against the Defendants as a matter of course before a responsive pleading has been served, by adding thereto Paragraph XIII:

XIII.

The picketing being conducted by the union is unlawful in that said picketing is being conducted in a violent and unreasonable manner. On more than one occasion, the pickets have abused the guests and employees of the Plaintiff's hotel with obscene language, threats and vile names. On many occasions, employees coming to and from their work at the hotel owned by the Plaintiff and at other times have been intimidated and threatened with bodily harm and injury in the event that they continued to work at the hotel. Telephone operators employed in the hotel have been harrassed, (sic) threatened, abused, and subjected, over the telephone, to threats of violence and obscenity by supporters of the union. Physical violence has been afflicted upon several of the employees working at the Plain-

tiff's hotel by members of the defendant union. These occurances (sic) have resulted in wide-spread terror, fear, and intimidation among the employees working at the hotel owned by the plaintiff. The Defendant union has continued to intimidate employees of the plaintiff to the point where many of them have stayed away from their work because of fear ever though they desired to continue active employment at the plaintiff's hotel.

[fol. 12] As a part of its plan to terrorize and intimidate the employees of the plaintiff into staying away from their work, members of the defendant union have taken down the numbers of the license plates of the employees' cars, and have taken still photographs and moving pictures of employees in the hotels entering, leaving, and during their working hours.

The picketing being conducted by the union is unlawful in that the defendants have represented said picketing as being the result of a strike.

Sibley & Davis, Attorneys for Plaintiff, by Marion E. Sibley, Of Counsel.

George E. Fox, Agent, Plaintiff & General Manager.

Duly sworn to by George E. Fox, jurat omitted in printing.

[fol. 13]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

ORDER DENYING PLAINTIFF'S APPLICATION FOR TEMPORARY INJUNCTIVE RELIEF—May 5, 1955

This Cause came on regularly for hearing upon the plaintiff's application for temporary injunctive relief in accordance with the prayers of the verified complaint as amended. The court has heard and considered the testimony adduced on behalf of the plaintiff, has read and considered the evidenciary (sic) exhibits of the plaintiff, and has heard and considered arguments of counsel for the respective parties.

In consideration thereof, the court is of the opinion and finds that the plaintiff has not made a sufficient showing for injunctive relief on the basis of the manner of the picketing and the method in which it is being conducted.

It Is Accordingly Ordered, Adjudged and Decreed that the plaintiff's application for a temporary injunction be and it is hereby denied, without prejudice; and

It Is Further Ordered that, the defendants not having filed answers or other pleadings to the complaint, the allegation or contention made by the plaintiff that the picketing is conducted for an unlawful or illegal purpose is not considered nor passes (sic) upon, but determination of this question is reserved until final hearing.

Done and Ordered in Chambers this 5 day of May, 1955.

Charles A. Carroll, Circuit Judge.

[fol. 15]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY

No. 178554-D

SAX ENTERPRISES, INC., Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as business agents and officers thereof, Defendants.

Miami, Florida,

Transcript of Hearing—Thursday, April 28, 1955

The above-entitled cause came on for hearing before the Hon. Charles A. Carroll, Division D; Hon. Grady L. Crawford, Division F; Hon. Pat Cannon, Division H: and Hon.

Robert L. Floyd, Division J, Judges of the above-styled Court, at the Courthouse, Miami, Florida, on Thursday, April 28, 1955, at 2:15 o'clock P. M.

APPEARANCES:

Sibley & Davis, Esqs., Attorneys for Plaintiff, By: Marion E. Sibley, Esq.; Darrey A. Davis, Esq.; Thomas H. Barkdull, Jr., Esq., and Milton Grusmark, Esq., Of counsel.

Warren, Klein & Moore, Esqs., By: Hon. Fuller Warren and Arthur Kline, Esq.; and J. Carrington Gramling, Esq., of the firm of Gramling & Gramling, Esqs.; and J. W. Brown, Esq. and Ben Gettler, Esq., of Cincinnati, Ohio, Attorneys for Defendants and certain intervenors.

[fol. 16] Judge Carroll: Gentlemen, as a means of identification, we will call the cases, and then the lawyers involved in the respective cases can give their appearances.

The Clerk: Chancery No. 178554, Sax Enterprises, Inc.

Mr. Sibley: If Your Honors please, the firm of Sibley & Davis has been employed as counsel for the plaintiffs in each of the nine cases here today. I believe that counsel for the defendants is the same, also.

Mr. Gramling: That is correct.

Judge Carroll: List all the counsel.

Mr. Sibley: Counsel for the plaintiffs are Marion E. Sibley, Darrey A. Davis, Milton Grusmark, Thomas H. Barkdull, all partners in the firm of Sibley & Davis. They are the attorneys for the plaintiffs in each case.

Mr. Gramling: For the defendant, there is Honorable Fuller Warren, of the firm of Warren, Klein & Moore; and J. Carrington Gramling, of the firm of Gramling & Gramling; and J. W. Brown, general counsel of the International Hotel and Restaurant Employees Union, from Cincinnati; and Ben Gettler.

Judge Carroll: May I ask plaintiff's counsel what is the nature of the case? Is there any distinction between the cases?

Mr. Sibley: The only distinction, Your Honor, that I can point out, between the cases, may be some specific acts of

[fol. 17] violence, which will be applicable to the particular cases, and not necessarily to all the cases.

The general background, though, of all the cases, is the same, and much of the testimony applicable to one will be applicable to all.

We think that the general background of all actually will be admissible as to each case.

Judge Cannon: Is it contended, in all cases involving violence?

Mr. Sibley: Yes, it is.

Mr. Warren: We deny that, Your Honor.

Mr. Gramling: I would wish to add the name of Benjamin Gettler, of Cincinnati, as co-counsel with Mr. Brown.

Judge Carroll: I understand that these several cases will, to this extent, be heard together.

Mr. Sibley: Yes.

Judge Carroll: And that the respective judges who are handling the case in the different divisions in which they have fallen, will act independently on their own cases, although they are sitting here today.

Mr. Sibley: It is agreeable.

Judge Carroll: It is agreeable to counsel for both sides that we conduct the proceeding in this manner; is that correct?

[fol. 18] Mr. Sibley: I believe so, sir.

* For additional parts of transcript, see supplemental record.

[fol. 337] ORAL RULINGS

Judge Carroll: Before proceeding, the Judges in the respective cases have certain rulings which they wish to announce at this point.

In that connection, I might say that a lot of you folks out there are vitally interested in this case, or in these cases, and in their disposition, certain rulings will be announced, and it is requested that you show no reaction or make any demonstration one way or the other.

Now, referring to myself, to the case which is in my Division, which is Chancery No. 178554, Sax Enterprises, Inc., against Hotel Employees Union, and so forth, there are, to begin with, certain motions to join additional par-

ties, to strike, and for intervention, which were not argued, and which are not disposed of, but which may be taken up at a later time and argued on appointment.

As to the application of the plaintiffs for a temporary injunction in this case, the ruling of the Court is that the application is denied, without prejudice.

In explanation of that, I want to state, for the record, that I feel that there has not been a sufficient showing for [fol. 338] an injunction against the picketing on the basis of the manner of the picketing, and how it has been conducted and the other matters allied to it.

Also, I want to state, however, that the ruling is without prejudice to re-apply for an injunction on the grounds of excessive conduct or violence, if such appears to be justified by future acts.

Also, on the contention of the plaintiffs that the picketing is for illegal purposes, I recognize, that as a major question in this case, and I note, however, that answers have not been filed, and I do not pass on that question, one way or the other at this time.

I feel that it is something which should be ruled on only after answer and on final hearing.

My order will not be made expressly conditioned upon expediting the case, but there, again, the case will be expected to progress without any undue delay because of the effect of the case on the various parties.

I think I expressed that the injunction is without prejudice in those respects.

My ruling applies, as stated at the outset, only in the case which is in my Division, which I described.

[fol. 339] Judge Crawford: Let the record show, that in Chancery Cases No. 178612, styled Monte Carlo, Plaintiff, versus Hotel Employees Union, and so forth; and Chancery Suit No. 178779, styled 2500 Collins Avenue Corporation, versus Hotel Employees Union, and so forth, the applications for temporary injunction are denied, without prejudice.

Let the record further show that my reason and thought in the matter are substantially those as expressed by Judge Carroll.

Judge Floyd: Let the record show, that in Chancery

Cases No. 178704, styled, Sorrento Hotel Corporation, versus Hotel Employees Union, Local 255, and so forth; and Chancery Case No. 178668, styled, Harry Levy, et al, versus Hotel Employees Union, Local No. 255, and so forth, being the two cases assigned to my Division; and in Chancery Cases No. 178667, styled Leevlans Corporation, versus Hotel Employees Union, Local 255, et al; and Chancery Case No. 178582, styled Boca Raton Club, Inc., et al, versus Hotel Employees Union, Local 255, et al, the latter two cases being cases assigned in Judge Gordon's Division that the motions to strike, the motions to intervene and the [fol. 340] motion to bring in additional parties is not ruled upon at this time, but may be argued by special appointment.

That the application in all of the cases for a temporary injunction is denied without prejudice; that a serious question of illegality raised on argument here this morning is not passed upon at this time—my reasons being substantially the same as Judge Carroll's.

I would like to inform counsel about today, being Saturday, and I do not have at my disposal today a secretarial help, and the fact that I am leaving for Tallahassee on order of the Governor to sit in the second Judicial Circuit, which will be all next week, I would appreciate it if counsel would prepare the orders in those four cases and air mail them to me at Tallahassee, so that I may sign them, if I approve the form of them, and of course, mail them back to be filed in the cases.

I would also like counsel, whoever prepares it, to submit it to other counsel for approval as to form.

I would also like to announce that Judge Gordon, in the two cases assigned to his Division, will return to his cham- [fol. 341] bers here on Monday, and, of course, any future applications regarding his cases should be made to him.

* * * * * * *

[fol. 356]

IN THE SUPREME COURT OF FLORIDA

January Term, A. D. 1955—Special Division A.

Case No. 26,187

SAX ENTERPRISES, INC., Petitioner,

v.

HOTEL EMPLOYEES UNION LOCAL No. 255 (A. F. of L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

A Writ of Certiorari to the Circuit Court for Dade County, Charles A. Carroll, Judge.

Sibley & Davis and Weldon G. Staray, for Petitioner.

Warren, Klein & Moore, Gramling & Gramling and J. W. Brown, for Respondents.

OPINION—Filed May 27, 1955

HOBSON, J.:

Petitioner is the owner of one of the popular hotels of Miami Beach, the Saxony. Respondents comprise Hotel Employees Union Local No. 255 (A. F. of L.), its business agents and officers. Petitioner filed a complaint wherein it prayed that respondents be enjoined from picketing its hotel on account of violence and that the picketing was done for an unlawful purpose. On application for temporary injunction, evidence was taken, at the conclusion of which temporary injunction was denied. As to the conten-[fol. 357] tions that the picketing was for an unlawful purpose, the chancellor specifically recognized that to be the main issue in the case but refused to adjudicate it because no answer had been filed or issue made on that point. Said the chancellor, that point should be decided at final hearing after answer. His order was conditioned on expediting the

cause on account of its effect on the parties. From this order, we are confronted with an appeal by certiorari.

The point for determination is whether or not the chancellor committed error in entering said order.

At the ourset, (sic) it is pertinent to relate that while this case was heard in conjunction with similar cases against the Roney Plaza, the Monte Carlo, the Sans Souci, the Sherry Frontenac, the Sorrento and the Algiers Hotels, the order involved here applies only to the Saxony Hotel. We have examined the record carefully and we find insufficient showing to reverse the chancellor on the question of whether or not picketing the Saxony Hotel was accompanied by violence. His order was "without prejudice to reapply for an injunction on the grounds of excessive conduct or violence, if such appears to be justified by future acts" and warranted by the evidence.

Whether or not the picketing was being done for a lawful purpose presents a more difficult question. Petitioner contends that it was entitled to an injunction because its complaint was sworn to and not challenged by motion to dismiss, answer or affidavit denying the facts relied on. Anderson v. Tower Amusement Co., 118 Fla. 437, 159 Fla. 782; Kellerman v. Chase & Co., 101 Fla. 785, 135 So. 127; First [fol. 358] National Bank of Gainesville v. Massey, 132 Fla. 113, 182 So. 187; Taylor vs. Florida East Coast Railway Company, 64 Fla. 635, 45 So. 574; Seaboard Oil Company v. Donovan, 99 Fla. 1296. 128 So. 821; Treasure, Inc. v. Hotel & Restaurant Employees and Bartenders' Union (Fla. 1954), 72 So. 2d 670, and Osceola Groves, Inc. v. Wiley (Fla. 1955), 78 So. 2d 700, are offered to support this contention.

We must agree with petitioner's contention because in a situation such as is presented by the record in this case, when the point is raised, the chancellor is duty bound to determine on an application for a *temporary* restraining order whether the picketing was for a lawful purpose. The allegations of the sworn complaint together with the evidence introduced at the hearing upon the application for a temporary restraining order, at which hearing all parties hereto were represented, are sufficient under our opinion in Miami Typographical Union v. Ormerod (Fla. 1952)

61 So. 2d 753, the cases cited therein, and Treasure, Inc. v. Hotel & Restaurant Employees and Bartenders' Union, supra, 72 So. 2d 670, to establish the fact that the picketing which is being carried on was and is for an unlawful purpose.

Without doubt a labor organization has the right to engage in peaceful picketing of an employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union as the representative of such employer's employees. In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative (Treasure, Inc. v. Hotel & Restaurant Employees and Bartenders' Union, supra) and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to [fol. 359] the employer a fair opportunity to engage in negotiations. See North East Texas Motor Lines, Inc. v. Dickson, et al. (Texas) 219 S. W. 2d 795.

With no evidence to the contrary, the chancellor had no alternative other than to accept as true the sworn allegations of the complaint. Pertinent among these allegations are the following:

> " * * * the two organizers, one of whom is David Herman, and the other is one of the defendants, ALBERT H. BERLIN, have utilized all the pressure tactics known to labor organizers to force and intimidate the employees of the plaintiff to become members of said labor organization. Their efforts in enlisting membership has been a distinct failure, so the said professionals determined to place pressure, intimidation and threats upon the hotel owners, in order to force said hotel owners through economic sanctions, to sign contracts with the said alleged organization, and thus use said contracts as a basis to force the employees of the hotels to become members of said alleged union.
>
> "To this end, said David Herman contracted Sol Cohen, president of the Miami Beach Hotel Owners Association, and demanded that the said Cohen negotiate with and line up all of the owners of the first class ocean front hotels on Miami Beach, to execute

labor contracts with the said alleged union, thus recognizing said union as representing the employees of the said hotels, and in this fashion, to enable the said union to procure membership among the employees of said [fol. 360] hotels. Said Herman threatened Mr. Cohen by stating that unless the Hotel Association actively enlisted the hotel owners to join with the said union by giving it contracts as aforesaid, that the said David Herman would, through economic sanction such as picket lines around said hotels, cause them great economic loss, and thus force them, through such economic loss and pressure, to give to the said union contracts covering the employees in said hotels, who were not, in fact, members of or represented by the said alleged union in any fashion whatsoever. The Miami Beach Hotel Owners Association, and its president, has no power or authority to represent the owners of the individual hotels in reference to any labor matters involving the owners of any particular hotel."

"V

"The Plaintiff has had no dealings whatever with any members of the HOTEL EMPLOYEES UNION, LOCAL No. 255 A. F. of L. Said union has never sought to negotiate with the plaintiff as the representative of plaintiff's employees; in fact, Local No. 255 does not represent the vase majority of the plaintiff's employees. No labor controversy or negotiations in reference to any labor dispute has ever been instituted, inaugurated, or carried on between the plaintiff and the said alleged union, and the said union has never sought to bargain with the plaintiff as the alleged representative of plaintiff's employees, and plaintiff alleges that the said union has never been authorized by the [fol. 361] vast majority of its employees to represent them."

"VI.

"The plaintiff has never refused to recognize the defendant union, and has never refused to negotiate with said union; the plaintiff has never been requested

by the said union to negotiate with it, and has never been advised by the said union that the union is the bargaining agent for plaintiff's employees, nor has the plaintiff been advised by said union that it is the labor organization representing plaintiff's employees. In truth and in fact, no demand or grievance of any nature whatsoever of the plaintiff's employees has, up to the present time, been made of or placed before the plaintiff, its officers or agents.

"Notwithstanding, said union at 6:00 o'clock in the morning on Wednesday, April 13, 1955, placed a picket line consisting of six or more pickets in front of the plaintiff's place of business, and each of said pickets in said line carried a placard or poster which falsely and fraudulently alleged that the plaintiff had refused to negotiate with the defendant union. Each of said placards carried the following words:

> 'This hotel refused to negotiate with Hotel Employees Union, Local #255, American Federation of Labor, 1575 Washington Avenue, Miami Beach'.

[fol. 362] Such representation made by said union is false and untrue, and the said union knows that the said statements are false and untrue. Said statements are made for the purpose of deceiving the public. The picket line was placed around the plaintiff's place of business for an unlawful and illegal purpose in that the defendant union is carrying out its threat to the president of the Miami Beach Hotel Owners Association by placing economic pressure on the plaintiff, thereby seeking to cause the plaintiff, by loss of revenue thus occasioned, to execute a labor contract with the said union." (Tr. 3, 4, 5, and top line on p. 6)

Since, according to the allegations of the sworn complaint, the placards carried by the pickets contained false information, it cannot be said that they conveyed "information concerning the *facts* of a labor dispute". (Italics supplied.) It is therefore obvious that the purpose of the picketing is unlawful. As we said in the case of Miami Typographical Union No. 430 v. Ormerod, supra:

"When picketing is carried on to further an unlawful purpose, as was correctly determined in this case, it loses its characteristic of free speech which is guaranteed by the First Amendment to the Federal Constitution. It becomes, as was stated by Professor Gregory in his work on Labor and the Law, cited with approval by the U. S. Supreme Court in the case of Hughes v. Superior Court of State of Calif., 1950, 339 U. S. 460, 464, 465, 70 S. Ct. 718, 94 L. Ed. 985, [fol. 363] 'simply a species of coercion traveling under the guise of speech for the purpose of enjoying constitutional immunity * * *.'"

It is clear, therefore, that the real purpose of the picketing was to force the employees of the Saxony Hotel to designate the union or the individual respondents as their bargaining agent, and to coerce said hotel owners through economic sanctions to sign contracts with the union and to use said contracts as a basis to compel the employees of the hotels to become members of the respondent union.

Certiorari is granted as to that part of the chancellor's order which deferred a ruling upon the question whether or not the picketing was being carried on for an unlawful purpose, and the cause is remanded to the Circuit Court with directions to enter a temporary restraining order.

It is so ordered.

DREW, C.J., TERRELL and SEBRING, JJ., concur.

[fol. 365]

IN THE SUPREME COURT OF FLORIDA

January Term A.D. 1955—Friday, May 27, A.D. 1955

SAX ENTERPRISES, INC., Petitioner

v.

HOTEL EMPLOYEES UNION LOCAL NO. 255 (A.F. of L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents

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JUDGMENT—Entered May 27, 1955

Counsel for Petitioner having filed in this cause Petition for Writ of Certiorari and having been considered, it is ordered by the Court that said Petition be and the same is hereby granted as to that part of the chancellor's order which deferred a ruling upon the question whether or not the picketing was being carried on for an unlawful purpose, and the cause is remanded to the Circuit Court with directions to enter a temporary restraining order; it is further ordered by the Court that the Petitioner do have and recover of and from the Respondents its costs by it in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared by Mr. Justice HOBSON was this day ordered to be filed.

[fol. 368]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

In Chancery No. 178668

SAX ENTERPRISES, INC., Plaintiff

v.

HOTEL EMPLOYEES UNION LOCAL NO. 255 (A. F. of L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants

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ANSWER—Filed May 9, 1955

Come Now the defendants and make this their Answer to the complaint and answering, say:

1. They admit the identity of the parties hereto as alleged in Paragraph 1.

2. They are without knowledge as to the matters and things set forth in Paragraph 2, but aver that if the said hotel enjoys a fine reputation and valuable good will that such asset has been created in large measure by the excellence of performance by the many employees of said hotel while said employees are yet not recognized by the plaintiffs through their duly designated representative of their own choosing, to-wit: Hotel Employees' Union Local No. 255; and that the purpose of this instant litigation is to deprive the said employees who have contributed so richly to the success of plaintiff hotel of their constitutional and statutory guarantees of being represented for collective bargaining purposes by representatives of their own choosing.

3. Defendants admit that the said hotel employs many people as cooks, waiters, bell boys, maids, elevator opera-
[fol. 369] tors and other similar duties normally required to operate and maintain a hotel, but deny the remaining

allegations of Paragraph 3 of the complaint and aver that the employees of plaintiff hotel have long been dissatisfied with their wages, working conditions and other phases of the employer-employee labor relationship and aver that plaintiff has suffered a large turnover in the employees, because of the sub-standard rate of pay, working conditions, adjustment of grievances and other inter-related factors; and would aver that the many complaints on the part of the employees have been properly brought to the representatives of their own choosing as guaranteed by law, to-wit: Hotel Employees' Union Local No. 255, A. F. of L.; but that plaintiff hotel has at all times refused to negotiate or settle the many differences and grievances existing and under which the employees are now suffering.

4. Your defendants, not waiving their Motion to Strike Paragraph 4 of the complaint, would show that the individual officers of this union named in the complaint have been bona fide residents of this jurisdiction for many years respectively, to-wit:

Al Berlin	thirty-two years
Clarence L. Smith	eighteen years
Harry Mischel	eighteen years,

and are local home owners, maintaining their families as an integral part of Dade County, Florida, and that the said union was chartered by its International Union March 1, 1954 with a membership at that time of approximately thirteen hundred members; and that the said union has a present membership of approximately five thousand members; that because of the tactics of the plaintiff employers and other employers in the Community, acting in concert with the plaintiff in this cause, the employees of this plaintiff were denied representation in labor matters by agents of their own choosing and their wages were held far below existing standards in communities of similar size and nature; that hours per week are longer and more arduous than prevail in all similar establishments in other communities; that no machinery is tolerated by plaintiff employer [fol. 370] for adjustment of bona fide grievances and that

the employees of plaintiff generally were oppressed and militated against to such extreme that their anguished cries were heard in Cincinnati, Ohio, whereby and whereupon the Hotel and Restaurant employees and Bartenders International Union, consistent with its gracious objectives, did lend aid, comfort and support to the oppressed employees by lending them the services of said Dave Herman for the purpose of appealing to plaintiffs and their respective consciences, if any, in the hope that these employees may be liberated from the economic bondage in which they are currently unmercifully shackled.

5. Your defendants deny that they have never sought to negotiate with the plaintiff as the representative of plaintiff's employees and aver that Local 255 represents the vast majority of plaintiff's employees. Defendants admit that plaintiff has had no dealings whatever with any members of defendants' organization, but aver that the plaintiffs have failed and refused to have any dealings whatsoever with members of the Hotel Employees Union Local No. 255 A. F. of L., as a result of refusal to recognize the constitutional and statutory guarantees of the many employees in the matter of self-organization and collective bargaining; and your defendants deny each and every of the remaining allegations of the said Paragraph 5.

6. These defendants answering Paragraph 6 deny that the plaintiffs have never refused to recognize the defendant union and aver to the contrary that the very existence of this litigation and of the picketing line complained of in Paragraph 6, conclusively establishes that there has been no recognition of the bargaining agent or the labor representative of the employees and in making answer to Paragraph 6, would respectfully direct the attention of the court to plaintiff's own words in the first sentence of Paragraph 5 of the complaint, to-wit: "The plaintiffs have had no dealings whatever with any members", etc., and your defen- [fol. 371] dants aver that the cause of the picketing complained of in Paragraph 6 is admitted by plaintiff in the aforequoted opening words of Paragraph 5; and these defendants deny that they are picketing to require the plaintiff hotel to execute a labor contract and aver that no pro-

posed labor contract has been submitted to plaintiffs, for that plaintiffs have failed and refused to recognize the union or to in any manner negotiate or to consent to negotiate in the matter of a labor contract whatsoever; and these defendants deny that they seek to force the plaintiff to execute a contract in order to coerce and force plaintiff's employees to become members of said Union for that this union undertakes to represent only such employees as have duly designated this union as the representative of their own choosing, as provided for in FSA 447.03.

Your defendants admit the picketing but aver that the picketing is for the purpose of appealing to the friends and sympathizers of these defendants and its members and is an exercise of the freedom of speech as guaranteed to these defendants and the members of the defendant union, as set forth in Chapter 447.13 Laws of Florida.

7. Your defendants deny each and every of the material allegations of Paragraph 7, and deny that any meeting was had for the purpose of conducting a strike ballot, or that any strike ballot was had, secret or otherwise, and that no action was taken whatsoever as would come within the scope of FSA 447.09 as alleged in the complaint.

8. Defendant denies each and every of the material allegations of Paragraph 8 as fully and completely as though each were herein set forth and severally categorically denied.

9. Defendants deny each and every of the material allegations of Paragraph 9 as fully and completely as though each were herein set forth and severally categorically denied.

10. Defendants deny each and every of the material allegations of Paragraph 10 as fully and completely as though each were herein set forth and severally categorically denied.

[fol. 372] 11. On information and belief, your defendants aver that members of the public are being deterred and stopped from patronizing the plaintiff hotel, but would aver that if such is the case it is only because friends and sympathizers of oppressed working people have determined

to withhold their patronage from a place of business that refuses to negotiate with the bona fide representative of the employees of plaintiff hotel, contrary to the established American way of life and contrary to the spirit and intent of the public policy of the great United States of America, as expressed in the several pertinent Congressional Acts on said subject as well as enunciations of the Supreme Court of the United States of America and contrary to the policy of the State of Florida as enunciated in Article 12 Declaration of Rights, Constitution of Florida and FSA 447.01 (1) and 447.03, but your defendants aver that plaintiffs are bound by their several respective utterances and releases to the Press, wherein they aver in effect that they are experiencing "business as usual".

12. Defendants deny each and every of the material allegations of Paragraph 12, as fully and completely as though each were herein set forth and severally categorically denied.

Affirmative Answer.

Your defendants, having made full, true and complete answer to the complaint, would make their affirmative answer as follows: Your defendants aver each and every of the allegations of the foregoing answer as though herein at this point repeated and aver in addition thereto that the plaintiffs seek to maintain this litigation in a court of equity and good conscience with unclean hands, for that the plaintiff has denied to its many employees the statutory and constitutional guarantees of representation and collective bargaining as afore set forth and are endeavoring to frustrate and to bring to naught the provisions of the aforesaid statutory Constitutional clauses and enactments, contrary to equity and good conscience.

[fol. 373] That your defendant union as the spokesman and representative of its members who are employed by plaintiff, has long sought to bring about negotiations and the plaintiff has failed and refused to respond to the invitations and solicitations of this defendant union, acting on behalf of its members and that the picketing became necessary in order to appeal to the friends and sympathizers of the members of defendant union who are employed by plain-

tiff, in an endeavor to cause plaintiffs to recognize your defendant union as a lawfully constituted bargaining agent, as aforesaid; that in the utmost of good faith, your defendant union has invited plaintiffs to hold an election by secret ballot under any fair and impartial authority and by such secret ballot, demonstrate to plaintiff the bona fides of defendant union's assertion concerning majority representation.

That plaintiff seeks to deprive these defendants and the members of defendants' union of the constitutional guarantee of freedom of speech, as provided for in Article I and XIV Bill of Rights, Constitution of the United States of America and the similar provisions of the Declaration of Rights of the Constitution of the State of Florida and the Guarantee of Chapter 447.13 Laws of the State of Florida.

Wherefore, your defendant union prays this Honorable Court for the appointment of a Commissioner to hold an election and ascertain and report to this Honorable Court the truth and accuracy of the foregoing statement as to majority representation by the said Union and that this Honorable Court enter its Declaratory Decree declaring this Union to be in fact the duly authorized representative of the majority of plaintiff's "service" employees and that upon judicial ascertainment and Declaratory Decree, that this Honorable Court by its mandatory injunction, require the plaintiff to negotiate and bargain in good faith with this Union on behalf of the members of the Union, who are the employees of plaintiff, as is contemplated by Chapter 447 of the Laws of the State of Florida, together with Sec-
[fol. 374] tion 12 of the Bill of Rights, Constitution of the State of Florida and to deny the relief sought in the original complaint.

Fuller Warren; Warren, Klein & Moore; Gramling & Gramling; J. W. Brown, By Carrington Gramling, Solicitors for Defendants, 224 Shoreland Building, Miami, Florida.

[fol. 375]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

In Chancery No. 178668

SAX ENTERPRISES, INC., Plaintiff,

v.

HOTEL EMPLOYEES UNION LOCAL No. 255 (A. F. of L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers, thereof, Defendants.

ANSWER TO AMENDMENT OF BILL OF COMPLAINT—
Filed May 9, 1955

Come Now the defendants and deny each and every of the material allegations of the Amendment to Bill of Complaint as fully and completely as though each such averment was herein set forth and each severally categorically denied.

Fuller Warren; Warren, Klein & Moore; Gramling & Gramling; J. W. Brown, By Carrington Gramling, Solicitors for Defendants, 224 Shoreland Building, Miami, Florida.

[fol. 376]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

In Chancery No. 178,554-D

SAX ENTERPRISES, INC., Plaintiff,

v.

HOTEL EMPLOYEES UNION LOCAL No. 255 (A. F. of L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers, thereof, Defendants.

SUPPLEMENTAL ANSWER—Filed May 27, 1955

Come Now the defendants and make this their Supplemental Answer and would respectfully show unto this Honorable Court that the allegations of the Complaint and the prayer for relief in said complaint predicated upon such allegations alleging and averring a failure on the part of your defendants to meet the requirements of 447.09 (3 and 4) seek only to deprive your defendants of their constitutional guarantees of freedom of speech and to impose upon the individual members of the defendant Union an involuntary servitude contrary to the provisions of the 1st, 13th and 14th Amendments of the Constitution of the United States of America for that the requirement of a majority vote, by secret ballot of all employees to be affected by a proposed strike would be to abridge and deprive each individual of his constitutional right to speak freely his opinions and to refrain from working, individually or in concert with others, contrary to the aforesaid Constitutional provisions; that the said Statute would impose a prior censorship upon the right to freely express one's opinions and to refrain from working and to make known the facts of a labor dispute; that the provisions of said Statute if applied to the facts of this instant cause so as to grant the relief prayed for by the plaintiffs would be to abridge these

defendants and the members of the Union of their Constitutional guarantees as aforesaid.

Fuller Warren; Warren, Klein & Moore; Gramling & Gramling; J. W. Brown, by Carrington Gramling, Solicitors for Defendants, 224 Shoreland Building, Miami, Florida.

[fol. 377] Certificate of service (omitted in printing).

[fol. 378]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

In Chancery No. 178,554-D

SAX ENTERPRISES, INC., Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A.F. of L.), et al., Defendants.

PRELIMINARY INJUNCTION—May 28, 1955

It appearing that the Supreme Court of Florida, by its opinion and decree rendered on May 27, 1955, granted certiorari as to that part of my order entered in this cause on May 5, 1955, which deferred a ruling upon the question whether or not the picketing conducted by the defendants was being carried on for an unlawful purpose, and remanded this cause with directions to me to enter a temporary restraining order, on the present status of the case without further proceedings.

Accordingly, It Is Hereby Ordered, Adjudged and Decreed as Follows:

1. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, and all affiliated organizations, be and they each are hereby enjoined and restrained, until further order of the Court, from picketing

or causing to be picketed the Saxony Hotel, 3201 Collins Avenue, Miami Beach, Florida, its environs or approaches.

[fol. 379] 2. That the defendants, and each of them, and their servants, agents, officers, organizers, and employees, or anyone acting in conspiracy with the defendants and all affiliated organizations, be and they are hereby enjoined and restrained until further order of the Court from publishing or causing to be published any statements to the effect that a strike, walkout or cessation of work is in effect at the Saxony Hotel, or that the plaintiff refuses to negotiate or recognize the defendants or affiliated organizations as a collective bargaining agent of the employees of the Saxony Hotel.

3. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, and all affiliated organizations, be and they each are hereby enjoined and restrained until further order of the Court from carrying or causing to be carried any signs, placards or propaganda of any nature, kind or description in front of the Saxony Hotel, its environs or approaches.

4. That the defendants, and each of them, and their servants, agents, officers, organizers, and employees, or anyone acting in conspiracy with the defendants, and all affiliated organizations, be and they each are hereby enjoined and restrained until further order of the Court from molesting, interfering with, intimidating, coercing or directing any force or violence toward the plaintiff, its officers, servants, agents, employees, representatives, or its property.

[fol. 380] 5. Plaintiff shall file herein it's (sic) injunction bond with good and sufficient surety, in the principal amount of $2,500.00 payable to defendants, conditioned to pay all costs and damages in event this injunction order is dissolved or found to have been improvidently issued.

Done and Ordered at Miami, Florida, this 28th day of May, 1955.

/s/ Charles A. Carroll, Circuit Judge.

[fol. 381]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

In Chancery No. 178554-D

SAX ENTERPRISE, INC., Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al, Defendants.

SUPPLEMENTAL ANSWER—Filed June 28, 1955

Come Now the defendants and make this their Supplemental Answer and would respectfully show unto this Honorable Court that this Court is without jurisdiction to act in the cause for the reason that the plaintiffs in operation of said hotel are engaged in a business which affects inter-state commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state buslines, inter-state and international steamship companies and by passenger automobiles.

Said business further is part of "package deal" arrangements with said various inter-state and international airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Trans-World Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular & Occidental Steamship Company, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company,

Southern Railway System, Florida East Coast Railway, Atlantic Coast Line Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus [fol. 382] line companies including Greyhound Bus Line Company, Trailways Bus System and various other inter-state bus line companies. Said "package deal" arrangements are arrangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by plaintiffs and said inter-state carriers. All expenses incurred in promoting, making and consummating said inter-state and international sales are jointly shared by plaintiffs and said inter-state and international carriers. The proceeds of said inter-state and international sales are divided between plaintiffs as operator of said hotel and said inter-state and international carriers.

Said plaintiffs, as a part of the operation of said hotel, purchase numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said plaintiffs as a part of the operation of said hotel sell directly outside of the State of Florida and within the State of Florida for carriage or resale outside of the State of Florida.

Said plaintiffs as part of the operation of said hotel advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the states of the United States outside of the State of Florida and in various countries outside of the United States.

Plaintiffs as part of the operation of said hotel have on said premises various shops and services engaged in inter-state commerce including Western Union Telegraph services, numerous travel agencies, transportation offices for

airlines, steamship lines, railroad companies and bus lines, inter-state stock exchange branches, inter-state chain drug stores, inter-state clothing stores and other inter-state retail stores.

Defendants further state that said hotel is part of a multi-state chain, said entire chain being engaged in inter-state commerce, so that labor disputes at plaintiffs' hotel affects inter-state commerce.

Defendants further state that the Congress of the United States has by legislative enactment under the Constitution of the United States, occupied the fields as to all matters [fol. 383] complained of in the petition of plaintiffs and this State Court has no jurisdiction to act in the premises wherefore the said cause should be dismissed for lack of jurisdiction.

Gramling & Gramling, J. W. Brown, Ben Gettler,
By Carrington Gramling, 224 Shoreland Building,
Miami, Florida, Solicitors for Defendants.

Certificate of Service (omitted in printing).

[fol. 384]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

In Chancery No. 178554-D

SAX ENTERPRISE, INC., Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al, Defendants.

STIPULATION IN RE FINAL HEARING—Filed November 30, 1955

It is stipulated by and between counsel for the respective parties that all testimony and other evidence heretofore introduced in this case, be and the same is hereby reaffirmed for the purpose of final hearing, with the addition, however, that at said final hearing the defendants would produce

Dave Herman, who would testify according to the Affidavit attached hereto.

It is further stipulated that Defendants would produce the signatories of the designation cards, who would severally testify that "they have designated Hotel Employees Union #255 as their collective bargaining agent; that they have each requested the Union to negotiate on their behalf with the employer on all matters dealing with wages, hours, and conditions of employment. The witnesses would also testify that such designation was prior to the commencement of picketing unless the cards show otherwise. Each would also testify that he or she left his or her employment as part of a general walkout and of their own free will and volition. There was no coercion, no force and no threats that caused them to walk out. Each of the witnesses would also testify they had engaged in picketing and such picketing has been peaceful."

[fol. 385] It is stipulated that the defendants would produce Clarence Smith as a witness, who would testify according to his affidavit attached hereto; and it is

Stipulated that said testimony would be objected to on the grounds that said testimony is immaterial and irrelevant; and it is

Stipulated that this testimony of Clarence Smith and the objections thereto be submitted to the Chancellor for ruling thereon, and in the event the objection is sustained, the affidavit of Clarence Smith shall remain as part of the record as a proffer, and all objections as to form of such proffer be, and they are hereby waived.

It is further stipulated that final decree be entered by the Chancellor upon the record as now made in the light of this Stipulation.

Witness our hands at Miami, Dade County, Florida this 30 day of November, 1955.

Sibley & Davis, Attorneys for Plaintiff,
By /s/ Marion Sibley.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, by Carrington Gramling.

[fol. 386]

In Chancery No. 178554

AFFIDAVIT OF CLARENCE SMITH FOR DEFENDANTS

Personally appeared before me the undersigned authority Clarence Smith, who being by me first duly sworn deposes and says as follows:

"My name is CLARENCE SMITH, and I am Business Agent with HOTEL EMPLOYEES UNION, LOCAL 255 duly licensed under the laws of the State of Florida and have been a resident of Dade County, Florida for the past 22 years. That plaintiffs, in the operation of their hotel are engaged in a business which affects interstate commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida, and from various countries outside of the United States by various interstate and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state bus lines, inter-state and international steamship companies, and by passenger automobiles. Said business fur-
[fol. 387] ther is part of "package deal" arrangements with said various inter-state and international airlines, including Pan American Airways. American Airlines, Delta Airlines, Eastern Airlines, Transworld Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular and Occidental Steamship Companies, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coastline Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus lines companies including Greyhound Bus Lines Company, Trailways Bus System and various other inter-state bus line companies. Said "package deals" arrangements are

arangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an intergral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by Plaintiffs and said inter-state carriers. All expense incurred in promoting, making and consummating said inter-state and inter-national sales are jointly shared by Plaintiffs, and said inter-state and international carriers. The proceeds of said inter-state and inter-national sales are divided between Plaintiff, as operator of said hotel and said inter-state and international carriers; said sales of Plaintiff in inter-state commerce exceed in volume amount sufficient to establish Jurisdiction of National Labor Relations Board under its rules and regulations.

Said Plaintiffs, as a part of the operation of said hotel, purchases numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said Plaintiffs, as a part of the operation of said hotel, sell directly outside of the State of Florida and within [fol. 388] the State of Florida for carriage or re-sale, outside of the State of Florida. Said plaintiffs as part of the operation of said hotel, advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the States of the United States outside the State of Florida and in various countries outside of the United States.

Further Affiant Sayeth Not.

/s/ Clarence L. Smith, Affiant.

Sworn to and subscribed before me this 15 day of November, 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at large.

My Commission Expires: Aug. 20, 1959.

[fol. 389]

IN CHANCERY NO. 178554-D

AFFIDAVIT OF DAVID HERMAN FOR DEFENDANTS

STATE OF FLORIDA,
COUNTY OF DADE, *ss.*:

Before Me, the undersigned authority, this day personally appeared David Herman, residing at the Eastview Hotel, Miami Beach, Florida, of full age, who, after being by me first duly sworn, upon his oath deposes and says:

I am Director of Organization of Hotel Employees' Union, Local 255, and have been in this position since on or about February 15, 1955. During the course of my duties as Director of Organization I have received many complaints from employees of the Saxony Hotel concerning the deplorable wages and working conditions existing at the Hotel. These deplorable conditions included a 7-day week, 12-hour day, no compensation for overtime, no job security, low wages and many others.

When I first assumed my duties as Director of Organization, I learned from the records of Local No. 255, and by being advised by various spokesmen for the Miami Beach Hotel Association, that the Miami Beach Hotel Association represented this Plaintiff Hotel among others, for the purpose of labor relations and dealings with any labor organizations. After I assumed my duties as Director of Organization and up to the present date, I have been similarly advised by various hotel owners as to the truth of the aforesaid statement. I was further advised as to the representation of Plaintiff Hotel by the Miami Beach Hotel Association by my attorney, J. Carrington Gramling, who exhibited to me the ruling of the Honorable George E. Holt in Chancery Cause No. 121214 wherein Morris Lansburgh and the Miami Beach Hotel Owners Association were Defendants, in which order the various hotels of Miami Beach, who were members of the Association, were enjoined, [fol. 390] as members of the Association from blacklisting and indulging in other unfair labor practices, which order

judicially recognized Hotel Owners Association as a proper party for the purpose of enjoining its member hotels in labor matters, after the taking of testimony. The Miami Beach Hotel Owners Association referred to in said Case #121214 is the same and identical association referred to herein as Miami Beach Hotel Association.

I first contacted Plaintiff by contacting their representative, the executive president of Miami Beach Hotel Association, Mr. Sam Rivkind, who was also the executive president of the Association at the time of the entry of the order by Honorable George E. Holt, against the Association, as aforesaid. Such contact was on March 3, 1955 by direct conversation with the said Mr. Rivkind. I discussed with Mr. Rivkind the desires of the employees of the various member hotels of the Association to be represented in all labor-employer relation matters by Local 255, and the desires of said employees to improve their wages, hours and working conditions. Mr. Rivkind advised me that he would discuss with the Board of Directors of the Hotel Association and the owners of the various hotels involved, including Plaintiff herein, the advisability of a conference for the purpose of working out an orderly procedure whereby defendant Union would be able to establish its right to bargain collectively on behalf of its members employed in the various hotels, including Plaintiff Hotel, based upon a secret ballot. Mr. Rivkind stated that he would endeavor to bring about a meeting between myself and such other representatives of the Union as would be designated, and a representative committee from the Hotel Association.

I next met with Mr. Rivkind on or about the 6th or 7th day of March, 1955. He advised me that he had revealed our previous conversation to a number of the members of the Miami Beach Hotel Association, including Plaintiffs; that he, however, was withdrawing from the executive presidency of the Association and that I should therefore continue any discussions with the President of the Association, Mr. Saul Cohen.

I met with Mr. Saul Cohen on March 20, 1955. We discussed the problem of the recognition by the Association of its members of Local 255 as the representative sf (sic) [fol. 391] Hotel Employees Union who had designated Local

255 as their collective bargaining agent. We further discussed the possibility of improving the working conditions and standards of said employees represented by Local No. 255, increasing their wages, reducing their hours, and other matters of that specific nature. There was no decision made at that conference.

I again met with Mr. Saul Cohen on March 23, 1955. We discussed the same general problems that were discussed in the meeting of March 20, 1955. I pointed out to Mr. Cohen the low wages, long hours and other unfavorable working conditions which existed in the various hotels, including Plaintiff Hotel, and advised him that it was our purpose to endeavor to improve those conditions for the persons who were represented by Local 255. It was generally agreed between us that the standards in said hotels, including Plaintiff Hotel, were very low. We discussed the example of representation of employees in New York City, whereby over a period of seventeen years through a process of orderly collective bargaining, conditions had been increased multifold since 1937. I pointed out to Mr. Cohen that in New York City, although the hotel industry from the point of view of numbers of employees and numbers of rooms is equivalent to Miami Beach, that there has not been a serious strike, work stoppage or cessation of work in all of the time that the Union has been organized and that on the contrary, the hotel industry there was prospering simultaneously with the improvement of the conditions of the hotel employees. I also pointed out to Mr. Cohen that in every hotel where we claimed a majority, we would be willing and happy to go through an election to determine and establish that fact. I also advised him that in the event of disputes between Local 255 and the hotels, including Plaintiff Hotel, we would be willing in each case to submit such dispute to an impartial arbitrator to be mutually agreed upon by both parties.

Mr. Cohen replied:

> "You know I can't disagree with anything you say and I wish we had hotel owners in Miami Beach. We have got pants pressers, dressmakers, everything except hotel owners, and if I come to them with any kind of proposition like that, they will think I am crazy. They

will think I am working for the Union instead of being the President of the Hotel Association."

[fol. 392] Mr. Cohen requested that I write a letter to the Secretary of the Association asking for a meeting. In accordance with the aforesaid suggestion, I wrote such a letter on behalf of Local 255; and I further advised Mr. Cohen, during the course of that conversation, that Local 255 represented a substantial number of employees of the hotels, including Plaintiff Hotel; in fact, I claimed that we represented a majority, which in fact we do. My statements in regard to representation were not questioned in any way. On the contrary, such representations were accepted by him.

I did not receive a reply to the letter sent to the Association referred to above; therefore, on April 10, 1955, I had published, by paid advertising in each of the three major Miami newspapers, a copy of said letter. However, I have never received to this very day, any reply whatsoever to the said letter or to the said ad.

A copy of said letter was sent to these Plaintiffs on March 30, 1955.

On or about March 9, 1955, following a luncheon meeting of the Exchange Club of Miami Beach, which I attended and addressed in the Saxony Hotel, I was introduced to Mr. George Fox, General Manager of the Saxony Hotel. Mr. Fox and I sat in the lobby of the hotel for about 30 minutes and discussed the conditions of employment of the hotel employees in the Saxony Hotel coming under the jurisdiction of this Union. Mr. Fox related to me the experiences with Local No. 255 dating back over a period of more than a year where he had had certain conversations with various representatives of Local No. 255 including Mr. Carl Hacker and Mr. Sam Cariola. Mr. Fox told me that he was in possession of a proposed form of a contract sent to him by Local No. 255 and that he had discussed the contents of the proposed contract with Mr. Hacker and had certain valid objections to the form. I told Mr. Fox that I was not entirely familiar with the form of the proposed contract, but that I would be willing to discuss any variations that would suit the problem and adjust the conditions

of the employees, members of Local No. 255. I told Mr. [fol. 393] Fox that we were in the process of enrolling the employees of the Saxony Hotel into membership in Local No. 255, and that I would talk to him at greater length and in more detail during the course of the next several weeks. Mr. Fox told mr (sic) that while he was general manager of the hotel, that actually matters of high policy involving wage adjustment and other improvements of working conditions would be subject to the approval of Mr. George Sax, who, at that time was away on a cruise and was expected back at Miami Beach in the near future. I then asked Mr. Fox to convey the subject of our conversation to Mr. Sax where these matters could be discussed. During the course of the 30 days, I had occasion to talk to Mr. Fox two or three times. I talked to him once soon after March 30, at which time I asked him whether he had received the letter that Local No. 255 had sent and a copy of which is attached hereto. Mr. Fox told me that he had received it, but was waiting for Mr. Sax to return so that he could discuss the matter with him. Another occasion on which I spoke to Mr. Fox was on or about April 8, 1955; at that time, I called Mr. Fox on the telephone and told him that I had heard that Mr. Sax had returned from his cruise and I asked Mr. Fox whether he had talked to Mr. Sax about the possibilities of a conference with Local No. 255 as requested in the letter and as conveyed orally by me on a previous occasion. Mr. Fox told me that he hadn't had a chance to talk to Mr. Sax about the matter, but would do so that day or the next day, and that he would be in touch with me to give me the results of the conversation between him and Mr. Sax. I tried again to call Mr. Fox on April 9 and 10, but I was unable to reach him and was told by his office that he was out of the building and couldn't by reached by telephone. I reported this situation to a meeting of Saxony Hotel employees that was held on April 12, at 240 N. E. 8th Street, Miami, Florida. The employees reviewed the long efforts on the part of Local No. 255 dating back more than a year and long before I came to this jurisdiction, and further reviewed the fact that a proposed form of contract had been submitted by a predecessor of mine many months prior, and further reviewed the fact

that all requests for negotiations of a contract, or even recognition for the purpose of commencing negotiations of [fol. 394] a contract, were unheeded by management. It was obvious that management was deliberately stalling and procrastinating for the purpose of frustrating the lawful wishes of its employees; and the employees of the Saxony Hotel decided to picket the hotel in protest against the refusal of the management in the Saxony Hotel to confer with the Union on the matters of representation, wages, hours and conditions of employment. At no time did Mr. Fox, Mr. Sax or any other representative of management question our claim that we represented a majority of the employees of the Saxony Hotel. At no time were we asked to prove this fact by any means or method whatsoever. Picketing commencing at 6:00 o'clock A.M. on April 13 was orderly and peaceful and continued until restrained by an Order of the Supreme Court of the State of Florida.

On May 25, 1955, the employees of the Saxony Hotel held a secret ballot vote designating Hotel Employees Union No. 255 as their bargaining agent and calling for a strike of the 300 employees within the jurisdiction of Local No. 255, who were employed at the Saxony Hotel; 225 participated in the ballot. The result of the secret ballot was a vote of 225 for a strike and representation by Local No. 255 and zero against. The ballots cast are attached hereto and made a part of this Affidavit.

The ballot was held under the general supervision of Sam Gyson as will more fully appear from a copy of his affidavit which is attached hereto as well as the affidavits of Jack Cullerton, Sidney Sommer, Ruth Salliant, Al Gonzales (DeLido #179409).

I am in possession of cards designating Hotel Employees Local No. 255 as the bargaining agent for the employees of the Saxony Hotel. These cards are signed by 295 of the respective employees. These cards came into my possession in the due course of business and are a part of the business records of Local No. 255, and established the fact that of the 300 employees within the jurisdiction of Local No. 255 that were employed in the Saxony Hotel, a total of 295 had separately and severally designated Local No. 255 as their bargaining agent.

[fol. 395] It is admitted by Mr. Fox in his testimony that practically all employees of the Saxony Hotel participated in the walkout, and it has been found by the Circuit Court of Dade County, Florida, and confirmed by the Supreme Court of Florida, that there was no violence involved.

Further Affiant Sayeth Not.

/s/ David Herman

Sworn to and Subscribed before me this 13 day of July A. D. 1955.

/s/ Syivia R. Lathero, Notary Public State of Florida at Large.

My Commission Expires: Aug. 20, 1955.

[fol. 396]

ATTACHMENT TO AFFIDAVIT OF DAVID HERMAN

March 30, 1955

Mr. Leon C. McAskill, Executive Director,
Miami Beach Hotel Association,
1 Lincoln Road,
Miami Beach, Florida

Dear Mr. McAskill:

This Union represents a substantial number of hotel employees who are employed in Miami Beach hotels by members of your Association.

It is the announced purpose of the Union to raise the general standards and improve the working conditions of the hotel employees; to provide welfare benefits and eliminate abuses where they exist.

There are several methods that labor and industry can employ in resolving the problems that develop in the course of operating the largest single industry in the community. We, on our part, prefer the method of peaceful negotiation.

For that reason we request that you communicate with the appropriate committee of the Hotel Association of Miami Beach and advise us of the time and place that a

conference can be held between a committee of the Association and a committee of the Union.

We respectfully suggest that such a conference be held at the earliest opportunity and arrangements for the conference be made during the course of the next ten days.

Very truly yours,

Dave Herman, Director of Organization, Hotel Employees Union, Local 255, American Federation of Labor.

cc: Board of Directors,
Miami Beach Hotel Association.

[fol. 397]

ATTACHMENT TO AFFIDAVIT OF DAVID HERMAN

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY NO. 179,409

DI LIDO HOTEL, INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.,) ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

AFFIDAVIT

STATE OF FLORIDA,
COUNTY OF DADE, *ss.*:

I am known professionally as Sam Gyson; radio broadcaster over Radio Station WAHR and columnist for the Miami Beach Publication, "Panorama". I am a registered voter of Dade County as Samuel Jack Geison, residing in the City of Miami. On Tuesday night, May 24, 1955, I

was the guest speaker at Hotel Employees' Union Local No. 255, at a meeting held at 920 Alton Road, Miami Beach. After Mr. David Herman, Special Organizer for the Union, revealed that he was unsuccessful in securing a strike vote supervisor or supervisory committee from among the Miami Beach City Council, the Presidents' Council and the City Clerk, I was asked if I would serve in a supervisory capacity to insure a fair and equitable election. I agreed.

On Wednesday morning, May 25th, I arrived at 920 Alton [fol. 398] Road. Persons appearing to vote were required by registrars on the voting premises to show suitable identification, for example, police identification cards, union cards or similar identification credentials. I exercised my right to challenge the qualifications of voters. At no time did I fail in securing the complete cooperation of Registrars or other election personnel. No one otherwise qualified to vote in this election was refused the right to vote because he or she was not a union member.

Since the elections were being conducted at two other places, as well as the aforementioned 920 Alton Road, namely Union Headquarters at 1575 Washington Avenue and 240 N. E. 8th Street, Miami, Florida, it was necessary for me to shuttle among the three places. Consequently, although I did not personally see the qualification to vote of every individual, I was satisfied that the procedure which I was witnessing at the outset, was typical of the election. Following acceptance for registration, each voter was given an unmarked ballot, excepting for the name of the hotel with which he or she was affiliated. Then in the privacy of specially constructed booths, each voter marked his ballot and voted. The voter folded his own ballot to further insure secrecy before depositing it in a box hermetically sealed, except for a slot to receive the ballot. At no time did I see or hear of the custodian of the ballot box inquire of the voter how he voted. The voting box was at all times in full public view. At approximately 10:30 P. M., on the day of May 25th, in the presence of more than 200 hotel employees at 920 Alton Road, I described the following procedure and paused at each point to receive a challenge from those present, who chose to challenge either procedure or my capacity as a challenging observer of the election and

vote tally. I made it clear that if there were a single challenge, not a majority, just a single challenge, I would withdraw from my role as a challenging observer. There [fol. 399] was no challenge. I inquired of all assembled at that time whether any single qualified individual had been denied the right to vote. No one stepped forward. I also inquired whether anyone know of any unfair or wrong procedure, in the conduct of the election. No one stepped forward. I also inquired whether anyone desired to challenge my capacity or conduct of the election. No one stepped forward.

My efforts as challenging observer gave me free call on the services and assistance of Jack Cullerton, Sidney Sommer, Ruth Saillant and Al Gonzales. At no time, did they question my judgment, but rather, carried out my instructions.

The procedure for counting is as follows: Three sealed ballot boxes were delivered to 920 Alton Road, one from 1575 Washington Avenue, Miami Beach, and two from 240 N. E. 8th Street, Miami, Florida. Three sealed ballot boxes were already located at 920 Alton Road. These six boxes had all been sealed. They were placed side by side on a table in full view of the more than 200 persons present. The procedure which I could not witness in its entirety for reasons to be explained later, but whose faithful execution is certified by affidavit included:

1. Opening the ballot boxes one by one and counting the total number of votes cast. This number was compared to the total registrations.

2. The total number of "yes" and "no" votes were tabulated.

3. A breakdown of the "yes" and "no" votes with respect to each hotel whose employees were involved in this election.

There were at least six observers present at all times in addition to the large crowd of approximately 200 persons who were permitted to watch the entire counting.

It was not possible for me to witness at first hand the entire vote collection and tallying process because of my

professional work, which brings me to the air at 11:30 each night except Sunday.

[fol. 400] Further affiant sayeth not.

/s/ (Samuel Jack Geison), /s/ Samuel Gyson.

Subscribed and sworn to before me at Miami Beach, Florida, this 25th day of May, 1955.

/s/ Bertha Zolun, Notary Public, State of Florida at Large.

My commission expires: Feb. 10, 1959.

[fol. 401]

ATTACHMENT TO AFFIDAVIT OF DAVID HERMAN

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY No. 179,409

DI LIDO HOTEL, INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.,) ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

AFFIDAVIT

STATE OF FLORIDA,
COUNTY OF DADE, *ss.*:

Before me, the undersigned authority, this day personally appeared Jack Cullerton, Sidney Sommer, Ruth Saillant and Al Gonzales, who, being by me first duly sworn, depose and say as follows:

That Sam Gyson is a radio announcer, columnist and feature article writer and has been engaged in such ac-

tivities in Dade County, Florida, for ..... years; that on May 24, 1955, the said Sam Gyson agreed to supervise, as impartial observer and supervisor, an election to be conducted among employees of the several hotels in and about the cities of Miami and Miami Beach, Florida; that affiants herein are working under Sam Gyson and aiding him in observing and conducting said election.

That notice of said election was given to all persons [fol. 402] employed at said hotels on May 21, 1955, and each day thereafter, until the start of said election, namely, 8:00 o'clock A. M., May 25, 1955, and such notice was given in the following manners:

1. Causing there to be published in the various newspapers of Dade County, Florida, notice of the holding of said election, purpose of said election, and dates, places and times of said election;

2. Causing there to be announced on the various radio and Television Stations, notice of the holding of said election, purpose of said election, and dates, places and times of said election;

3. Posting notices of the conduct of said election, purpose, dates and time of said election on bulletin boards located at the Headquarters of the Hotel Employees' Local Union #255, A. F. of L., 1575 Washington Avenue, Miami Beach, Florida, 920 Alton Road, Miami Beach, Florida, and an identical notice was posted on the bulletin boards of Hotel & Restaurant Employees' and Bartenders' Local Union #133, A. F. of L., at 240 Northeast 8th Street, Miami, Florida. (A true and exact copy of said notice is attached hereto and made a part hereof.)

4. By publishing and distributing handbills announcing the holding of said election, the purpose, dates, places and times of said election, and such handbills were distributed in front of and outside each of the major hotels, and most of the smaller hotels, in Miami Beach and Miami, Florida. Said handbills were also distributed at various central points throughout Dade County, Florida.

By the above set forth various means, affiants believe that every person eligible to vote, did receive notice of the election.

[fol. 403] Said election started at 8:00 o'clock A. M. Wednesday, May 25, 1955. The voting was conducted at the following premises:

920 Alton Road, Miami Beach, Florida
240 Northeast 8th Street, Miami, Florida, and
1575 Washington Avenue, Miami Beach, Florida.

Said election was conducted from the hour of 8:00 o'clock A. M. to 10:00 o'clock P. M., or until all persons in line by 10:00 o'clock P. M. had completed the voting. The voting was conducted in the following manner:

So as to insure complete privacy and secrecy of the ballot (copy of a sample ballot is hereto attached), at each voting place there were seated at the entrance of the voting premises persons working un (sic) the direction of these affiants. As each voter entered the voting premises, he or she was required to show bona fide identification to establish that he or she was employed at a hotel in Miami or Miami Beach, Florida. The person seated at the registration table would then fill in on the ballot the name of the hotel at which the voter was employed. The voter was then required to register by signing his or her name in the registration book and the name of the hotel in which he or she was employed, and his or her craft. After such registration, the voter was handed a ballot with the name of the hotel filled in.

At the voting premises, 920 Alton Road and 240 Northeast 8th Street, private voting booths had been erected in which the voter marked his or her ballot in secrecy; at 1575 Washington Avenue, Miami Beach, there were no individual voting booths erected but there was a private office provided so that the voters could mark their ballots in secrecy.

[fol. 404] After marking the ballot, the voter folded his or her ballot and dropped it in a ballot box on the voting premises placed there for that purpose so that at no time could anyone observe or discover how any particular voter had voted. The said voting box located at each voting premises was at all times in plain view and was in no way tampered with.

The counting procedure was as follows: As soon as the voting was over at each voting place, the ballot boxes which had been completely sealed except for an opening at the top for the dropping in of ballots, were further sealed by closing the opening at the top. All the ballot boxes were then brought together at 920 Alton Road, Miami Beach. Three were already at 920 Alton Road, one such sealed box was brought from 1575 Washington Avenue, Miami Beach; two such sealed boxes were brought over from 240 Northeast 8 Street, Miami. These 6 boxes were then placed side by side on a table in full view of several hundred persons who were present at the Alton Road premises. Mr. Gyson inquired of all the persons present concerning any objections to the election or to himself as observer and supervisor. There were no objections whatsoever. The ballot boxes were opened one by one and the total number of votes cast were tabulated. That number is presently being compared to the total number of registrations. The comparison as yet has not been completed. The total number of votes cast were *2849;* the total number of Yes and No votes were then tabulated. the total number of Yes votes were *2803;* the total number of No votes were *44;* the total number of void ballots were *2.*

As pointed out before, the entire checking and counting procedure has not been completed.

There were at least 6 observers present at all times, in addition to the large crowd of several hundred persons who were permitted to watch the entire procedure.

[fol. 405] Each of the undersigned served under Sam Gyson and carried out all of his instructions in their entirety, in exactly the same manner as though he were present at every stage of the proceedings.

Further affiants sayeth not.

/s/ Jack Cullerton, /s/ Sidney Sommer, /s/ Ruth Saillant, /s/ Al Gonzales.

Sworn to and subscribed before me this 26 day of May, 1955.

/s/ Bertha Zolun, Notary Public.

My comm. expires: Feb. 10, 1959.

[fol. 407]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 178,554-D

SAX ENTERPRISES, INC., Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

FINAL DECREE—November 30, 1955

This Cause coming on to be heard upon final hearing pursuant to the Stipulation of the parties to this cause, and it appearing to the Court that the defendants proffered the affidavit of Clarence Smith as evidence upon this final hearing, and plaintiff objected to said affidavit on the ground that the same is immaterial and irrelevant, and the Court sustains the objection thereto upon said grounds. The Court having considered the entire record in this cause, including the testimony taken before the Court, and the Court being fully advised in the premises.

It Is Thereupon Ordered, Adjudged and Decreed that the preliminary injunction heretofore rendered against the defendants, and each of them, which injunction is recorded in Chancery Order Book 1187, at Page 135, in the records of the Clerk of the Circuit Court of Dade County, Florida, be and the same is hereby made permanent. The injunc-
[fol. 408] tion bond filed herein is hereby cancelled and the principal and surety released of all liability thereunder. The costs of this cause hereby assessed in the sum of $354.66 are taxed against the defendants, for which let execution issue.

Done and Ordered in Chambers at Miami, Florida, this 30 day of November, 1955.

/s/ Charles A. Carroll, Circuit Judge.

[fol. 409]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 178,554-D

[Title omitted]

NOTICE OF APPEAL—Filed January 4, 1956

The defendants, Hotel Employees Union, Local No. 255, et al., take and enter their appeal to the Supreme Court of Florida to review the order, judgment or decree of the Circuit Court for Dade County, bearing date the 30 day of November, 1955, entered in the above styled cause and recorded in the records of said Court in Book 1214, Page 232, and all parties to said cause are called upon to take notice of the entry of this appeal.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants. By Carrington Gramling.

[fol. 410]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 13, 1956

Come now the defendants by their undersigned solicitors and make the following assignments of error as the errors which they intend to rely upon in the Supreme Court of Florida, for a reversal of the Order (or Final Decree) made herein on the 30th day of November, 1955, and recorded in Chancery Order Book 1214 at page 232 of the records of this Court, from which they have appealed:

1. The Court erred in enjoining the defendants in peaceful picketing the business place of the complainants, whereby your defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly,

and the right to work or refrain from working as guaranteed within the meaning and scope of Sections I, XII, XIII, XVII and XIX, Declarations of Rights, Constitution of the State of Florida, and Amendments I, V, XIII and XIV of the Constitution of the United States of America.

2. The Court erred (in and by such final decree) in finding that the defendants should have established to the satisfaction of the employer, that the employees had chosen [fol. 411] defendant Union as their representative and further requiring that the labor organization must also inform the employer of the object to be accomplished by picketing and afford an unwilling or hostile employer an unspecified waiting period within which to engage in negotiations, all as a prerequisite to the right to strike and picket, whereby your defendants and the Union members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments I, V, XIII and XIV of the Constitution of the United States of America.

3. The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

5. The Court erred (in and by said final decree) in enjoining peaceful picketing and the dissemination of information predicated upon an unsubstantiated finding of fact, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

6. The Court erred in requiring a direct employer-employee relationship as a prerequisite to picketing and

as a prerequisite to publicizing the existence of a labor dis- [fol. 412] pute, contrary to Amendments I and XIV of the Constitution of the United States of America.

7. The Court erred (in and by said final decree) in permanently enjoining peaceful picketing and the publicizing of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefor, and beyond the scope of any finding of fact insubstantial or otherwise, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

8. The Court erred (in and by said final decree) in assessing costs against the defendants.

J. W. Brown, Gramling & Gramling, Solicitors for Defendants. By Carrington Gramling.

[fol. 415] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 417]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957

DIVISION B

Case No. 28,239

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

SAX ENTERPRISES, INC., Appellee.

An appeal from the Circuit Court for Dade County, Charles A. Carroll, Judge.

J. W. Brown and Gramling & Gramling, for Appellants.
Sibley & Davis and Thomas H. Barkdull, Jr., for Appellee.

OPINION, PER CURIAM—Filed March 15, 1957

Affirmed on authority of Fontainebleau Hotel Corp. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., opinion filed February 1, 1957.

Terrell, C.J., Hobson, Drew and O'Connell, JJ., Concur.

[fol. 419]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957

DIVISION B

Case No. 28,239

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

SAX ENTERPRISES, INC., Appellee.

JUDGMENT—March 15, 1957

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellees do have and recover of and from the Appellants their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

[fol. 426]

IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

HOTEL EMPLOYEES UNION, LOCAL #255, A. F. of L. et al., Appellants,

v.

SORRENTO HOTEL, INC. and Twenty-One Others, Appellee.

Brief of Appellants—Filed May 14, 1956

APPEAL OF THE TWENTY-TWO HOTEL CASES FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

J. W. Brown and Gramling & Gramling, 226 Shoreland Building, Miami, Florida, Attorneys for Appellants.

[fol. 463]

DISCUSSION OF POINT 1

The State of Florida, by requiring proof of representation of the employees be given to the employer, (without providing a procedure) together with a statement of the objectives desired by the Union and the further requirements of an unspecified waiting period prior to picketing, and requiring a direct employer-employee relationship, has abridged the guarantees of Amendments I and XIV of the Constitution of the United States of America.

Point 1 raises the following Assignments of Error found in each of the twenty-two cases.

"The Court erred in enjoining the defendants in peaceful picketing the business place of the complainants, whereby your Defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly, and the right to work or refrain from working as guar-

anteed within the meaning and scope of Sections I, XII, XIII, XVII and XIX, Declaration of Rights, Constitution of the State of Florida, and Amendments I, V, XIII and XIV of the Constitution of the United States of America."

"The Court erred (in and by such final decree) in finding that the defendants should have established to the satisfaction of the employer, that the employees had chosen defen- [fol. 464] dant Union as their representative and further requiring that the labor organization must also inform the employer of the object to be accomplished by picketing and afford an unwilling or hostile employer an unspecified waiting period within which to engage in negotiations, all as a prerequisite to the right to strike and picket, whereby your defendants and the Union members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments I, V, XIII and XIV of the Constitution of the United States of America."

"The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States."

"The Court erred in requiring a direct employer-employee relationship as a prerequisite to picketing and as a prerequisite to publicizing the existence of a labor dispute, contrary to Amendments I and XIV of the Constitution of the United States of America."

[fol. 465] "The Court erred (in and by such final decree) in assessing costs against the defendant."

We quote from Building Service Employees, etc., v. Gazzam, 339 U. S. 532, 70 S. Ct. 784:

> "This Court has said that picketing is in part an exercise of the right of free speech guaranteed by the Federal Constitution.
>
> Cafeteria Employees Union, Local 302 v. Angelos, 320 U.S. 293, 64 S. Ct. 126, 88 L.Ed. 58; Bakery & Pastry Drivers & Helpers Local 802 of International Brotherhood of Teamsters v. Wohl, 315 U.S. 769, 62 S. Ct. 816, 86 L.Ed. 1178; American Federation of Labor v. Swing,

312 U.S. 321, 61 S. Ct. 568, 85 L.Ed. 855; Carlson v. People of State of California, 310 U.S. 106, 60 S. Ct. 746, 84 L.Ed. 1104; Thornhill v. State of Alabama, 310 U.S. 88, 60 S. Ct. 736, 84 L.Ed. 1093; Senn v. Tile Layers Protective Union, Local No. 5, 301 U.S. 468, 57 S. Ct. 857, 81 L.Ed. 1229."

The Supreme Court then pointed out that the only deprivations of this Constitutional right would occur from excessive violence (Milk Wagon Drivers case), picketing a cafe having no business connection with the place where the industrial dispute centered (Carpenters & Joiners Union case), picketing to coerce the employer to violate the Anti-Trust Law of Missouri (Giboney v. Empire Storage & Ice Co. case) and, in the Building Service Employees case, picketing to require an employer to sign a closed-shop con- [fol. 466] tract where the employer had voted unanimously that they did not want the Union.

It is apparent that the instant Florida case in no manner comes within any of the exceptions to the general ruld (sic) of American Federation of Labor vs. Swing, Supra. The records in these twenty-two cases reveal the following number of employees who had designated the Union as their Bargaining Agent, as was the right to do under Florida Statute 447.03.

Name of Hotel	Total Employees Within the Jurisdiction of Local No. 255	Number of Employees Designating Local 255 as Bargaining Representative
Algiers	225	205
Sans Souci	180	145
Monte Carlo	115	105
Sorrento	70	68
Sherry Frontenac	140	120
Roney Plaza	215	207
Sea Isle	180	135
Miami Colonial	35	31

Name of Hotel	Total Employees Within the Jurisdiction of Local No. 255	Number of Employees Designating Local 255 as Bargaining Representative
Biscayne Terrace	85	86
McAllister	120	110
[fol. 467]		
Di Lido	193	151
Casablanca	250	163
Empress	120	112
Saxony	300	295
President Madison	40	34
Delmonico	(not indicated in record)	51
Robert Richter	49	40
Versailles	75	59
Martinique	75	57
Lombardy	70	51

The foregoing figures are taken from the undisputed testimony and by counting the designation cards filed in evidence. The hotels attempt to explain away these cards by claiming that some were dated the day of the picketing or after picketing began or that some were "yellow cards" [fol. 468] designating the Hotel Joint Counsel (an alter ego of Local #255) or that many of the cards were undated. Regardless of what the Hotels claim, the hundreds of cards indicated above are in evidence and lodged in the Supreme Court of Florida.

It is obvious therefore that the Courts of Florida by some legal legerdemain have found that the right to Union representation and to speak through representatives of their own choosing and the right to appeal to the Court of Public Opinion via peaceful picketing should be denied to the thousands of workers on Miami Beach.

Discussion of Point 2

The State of Florida by requiring a majority vote of the employees as a condition precedent to the calling of a strike attempts to disenfranchise the minorities of their guarantees under Amendments I and XIV of the Constitution of the United States of America.

Point 2 is predicated upon Assignments of Error to be found in International Company, Inc. (Empress Hotel) vs. Hotel Employees Union, etc.; Di Lido Hotel, Inc. vs. [fol. 469] do. The Assignments of Error reads:

"The Court erred (in and by such final decree) in applying the statute of Florida (F. S. A. 447.09) declaring it to be unlawful to participate in any strike, walkout, cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby * * * to conduct any election referred to in Subsection 3 of this section without a secret ballot, forasmuch as said statute deprives the individual members of this Union of the Constitutional privileges guaranteed to them by Amendments I, V, XIII and XIV of the Constitution of the United States."

The Union contends that this Statute is unconstitutional and for a discussion of the law upon which we rely we refer the Court to Appendix page 21.

Discussion of Point 3

In refusing to consider evidence of Interstate commerce the State of Florida exercises jurisdiction over controversies lying exclusively within the Federal Jurisdiction.

Point 3 is predicated upon the Assignments of Error [fol. 470] appearing in each of the twenty-two cases which reads:

"The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relation. Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action,

all in violation of article 1, Section 8 and Article 6 of the Constitution of the United States."

The Union contends the State Courts of Florida are without jurisdiction in this matter under the "Commerce Clause" of the Federal Constitution and for a discussion of the law upon which it relies, refers this Court to page ..... of the Appendix.

Discussion of Point 4

By insubstantial findings of fact the Courts of Florida determined that the prerequisites to lawful picketing within its jurisdiction had not been met and thereby deprived the members of the Union of the guarantees of Amendments I and XIV of the Constitution of The United States of America.

"The Court erred (in and by such final decree) in permanently enjoining peaceful picketing and the publicizing [fol. 471] of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefore, and beyond the scope of any finding of fact, unsubstantiated or otherwise, thereby depriving the members of this Union the guarantee of Amendments I and XIV of the Constitution of the United States."

In the cases of *Morris Lansburg,* et al (Robert Richter); *Martinique Hotel, Inc.; Thomas Jefferson, Inc.* (San Marino); *R. S. Levy,* et al (Versailles Hotel) the Union caused its books and records to be examined by a Certified Public Accountant and the Certified Public Accountant executed his sworn certificate or affidavit that a specific number of employees in each of these hotels had designated the Union as their Bargaining Agent. In each instance the number of employees attested to by the Certified Public Accountant represented a huge majority of the total employees within the "Service Trades" of the respective hotels. In each case a "Request to Settle Grievances" was served on the hotel together with the certificate of the Certified Public Accountant and in each case the "Hotel demanded that the privacy of the employees be violated and their identities made known to the employer. Thereupon,

[fol. 472] the employer having refused to agree to any machinery such as a secret ballot or to have some disinterested person compare payrolls against the Union cards and having otherwise failed to accept its co-relative duty of responding to at least a prima facie showing by the Union, the picketing commenced. In these cases the Courts found in essence that the Union had made no showing as to its representation, had not stated the objectives to be attained and had not allowed a sufficient waiting period. The Courts even found that the purposes for the picketing were not what was stated in the "Request to Settle Grievances" and made independent findings of fact totally unsupported by any evidence whatsoever. (See page 11 to 14 supra.)

[fol. 527]

IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

HOTEL EMPLOYEES UNION, LOCAL NO. 255, A. F. of L., et al.,
Appellants,

v.

SORRENTO HOTEL, INC., and Twenty-One Others, Appellees.

Brief of Appellees—Filed July 30, 1956

Sibley & Davis, 605 Lincoln Road, Miami Beach, Florida, Thomas H. Barkdull, Jr., Of counsel.

* * * * * * *

[fol. 535]

ARGUMENT

POINT I

These Appeals Are All Controlled by "the Law of the Case" Established on the Same Records in Prior Certiorari Proceedings.

Commencing on April 13, 1955, and immediately thereafter, nine hotels on Miami Beach were faced with picket

lines in front of their establishments. These nine hotels are all appellees herein, namely, the Saxony, controlled by Sax Enterprises, Inc., the Roney Plaza, controlled by a corporation, Boca Raton Club, the Monte Carlo Hotel, controlled by a corporation of the same name, the Sans Souci Hotel, controlled by Leevlans corporation, the Sherry Frontenac Hotel, controlled by Harry Levy, et al, the Sorrento Hotel, controlled by a corporation of the same name, the Algiers Hotel, controlled by 2500 Collins Avenue corporation, the Casablance (sic) Hotel, controlled by the Casablanca Operating Company, the Sea Isle Hotel, controlled by a corporation of the same name. At a preliminary hearing on the first [fol. 536] 7 of the aforementioned nine hotels, the Chancellors denied the temporary relief sought, but the Chancellor who heard the evidence and testimony on behalf of the latter two hotels, issued temporary injunctions and based said decrees on the fact that the picket lines were set in a background of violence.

Certiorari was taken in the seven cases which had been determined by four different Chancellors, and the Supreme Court granted the writ in each case and reversed the Chancellors and directed the temporary injunctions to issue. See *Sax Enterprises, Inc.* vs. *Hotel Employees Union, etc.*, 80 So. 2nd 602; *Boca Raton Club* vs. *Hotel Employees Union, etc.*, 80 So. 2nd 680. After motions to dissolve the injunctions were heard by three of the Chancellors involving six of the hotels, eliminating the Saxony, the three Chancellors following such hearings, dissolved such temporary injunctions. Certiorari was again taken to the Supreme Court from these six orders quashing such restraining orders. Supersedeas was granted by the Court and subsequently the writ was granted and the Chancellors were again reversed, with directions to reinstate the injunctions. See *Boca Raton Club* vs. *Hotel Employees Union, etc., et al*, 83 So. 2nd 11. These injunctions were afterwards made permanent without additional proofs.

In the latter part of May, 1955, the McAllister Hotel, which was operated by a corporation of the same name, the Biscayne Terrace Hotel, and the Miami Colonial Hotel, controlled by the appellee, Allenberg, et al., were faced with [fol. 537] similar picket lines, and in June, 1955, the re-

maining appellees concerned in this brief were similarly involved with picket lines, such appellees being the Di Lido Hotel, the Lombardy Hotel, controlled by the Stuyvesant corporation, the Delmonico Hotel, the President Madison Hotel, controlled by the appellees, Saul Cohen, et al, and the Nautilus Hotel, controlled by A. S. H. corporation.

Counsel for the appellants, on page 24 of their brief, concede that all of the seventeen cases involved in this brief were " . . . essentially the same, as that of the Sax Enterprise Case." Certiorari having been previously taken which resulted in the temporary injunctions which were later made permanent, no additional evidence having been adduced by the parties, the points of law raised by the appellants here being the same as those previously presented to the Supreme Court, the decisions in the instant causes should be governed by the doctrine of "The Law of the Case". See *Ferguson* vs. *Brogan*, 111 (Fla.) 224, 149 So. 772, wherein the Supreme Court said:

> " . . . . To the extent that the applicable law was decided on the rehearing of the first appeal, that decision became the law of this case upon its remand to the circuit court, and questions so settled on the earlier appeal are no longer open to question on this appeal, which was subsequently taken from the final decree. Wilder v. Punta Gorda State Bank, 100 Fla. 517, 129 So. 865; Palm Beach Estates v. Croker (Fla.) 143 So. 792."

[fol. 538] See also *Savage* vs. *Horn*, (Fla.), 49 So. 2nd 329; 1 *Encyclopedic Dig. of Fla. Rep.*, Section 190, page 475; 2 *Fla. Jur.*, Section 403, page 654. Therefore, in view of the record now before the Supreme Court, being identical with that previously before the Court, there are no new or additional points of law to be determined or factual situations to be reviewed. The three opinions attached to the appellants' brief, in the first twenty pages of their appendix, were directly before this Court for review in the case of *Boca Raton Club, et al* vs. *Hotel Employees Union etc., et al.*, 83 So. 2nd 11, and were attached to petitioners' brief therein as appendix 1-9.

On pages 29 and 30 of the appellants' brief, reference is made to the number of employees who had designated the

union as their bargaining agent. The only cards properly identified as evidence by those who executed same were in the first six hotels listed on page 29 of appellants' brief, which cards incidently (sic) were before the Supreme Court in the second *Boca Raton* suit, *supra.* Those cards indicated that in the Algiers Hotel, one employee had designated the union as his bargaining agent, prior to the picket line; in the Sans Souci Hotel case two employees had designated the union prior to the picket line; in the Monte Carlo Hotel case, none of the employees had designated the union prior to the picket line; in the Sorrento Hotel case, three employees had designated the union prior to the picket line; in the Sherry Frontenac Hotel case, one employee had designated the union prior to the picket line; in the Roney [fol. 539] Plaza Hotel case, no employees had designated the union prior to the picket line. Also, in none of these cases had the union advised the employers whom they represented or had they made any demand on the employers. Therefore, it becomes apparent that the appellants are attempting review in these appeals the same records that have previously been before this Court and ruled upon.

In the Casablanca and Sea Isle cases, in addition to the Chancellor finding that the picketing was not instituted for a lawful purpose or instituted in a lawful manner, he found that it was conducted in an atmosphere of violence and coercion, said temporary injunctions, in part, reading:

> "... the Court finds that the picketing is being conducted by the defendants in a background of coercion, intimidation and fear, and that such picketing is conducted in an unlawful manner and for the accomplishment of purposes prohibited by the laws of Florida ..."

Therefore, in addition to the fact that these two cases are the same as those heretofore presented to the Supreme Court, and should also be governed by the doctrine of "The Law of the Case", the Chancellor, in these causes, should be affirmed in his findings in reference to violence on the authority of *Miami Typographical Union, et al* vs. *Ormerod, et al.*, Fla., 61 So. 2nd 753, wherein the Court said:

> "....We need not, but for the convenience of the bar, cite authority for the well-established rule that this

[fol. 540] Court will not substitute its judgment for findings of facts made by the Chancellor, who by law is charged with the duty and responsibility of evaluating the evidence, if there is in the record any competent substantial evidence which sustains such findings of facts or from which such findings flow as logical and reasonable inferences. Harmon v. Harmon, Fla., 40 So. 2nd 209; Hamilton v. Laesch, 134 Fla. 591, 184 So. 110 and cases cited therein; Guerra v. Quiterrez, 66 Fla. 570, 64 So. 232; Mock v. Thompson, 58 Fla. 477, 50 So. 673. See also U. S. Casualty Co. v. Maryland Casualty Co., Fla., 55 So. 2nd 741. This rule is particularly applicable when the Chancellor personally hears the testimony of all the witnesses."

Point II

The Application of Chapter 447 of the Florida Statutes and Recent Court Decisions to These Appellants.

Florida Statutes Involved

"447.01 *Regulating labor unions; state policy.*—

"(1) Because of the activities of labor unions affecting the economic conditions of the country and state, entering as they do into practically every business and industrial enterprise, it is the sense of the legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or nonunionist, must be protected. The right to work is the right to live.

[fol. 541] (2) It is here now declared to be the policy of the state, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers and other representatives, in the manner, and to the extent hereafter set forth."

"447.03 *Employees' right of self organization.*

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain

collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

"447.09 Right of franchise preserved; penalties.—It shall be unlawful for any person:

* * *

"(3) To participate in any strike, walkout, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in subsection (3) of this section without a secret ballot.

* * *

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in § 447.03, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family."

[fol. 542] The Supreme Court of Florida, in the case of *Sax Enterprises, Inc.* v. *Hotel Employees Union, Local No. 255, etc., et al.*, 80 So. 2nd 602, said:

"Without doubt a labor organization has the right to engage in peaceful picketing of an employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union as the representative of such employer's employees. In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative (Treasure, Inc. v. Hotel & Restaurant Employees and Bartenders' Union, supra) and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations. See North East Texas Motor Lines, Inc. v. Dickson, et al. (Texas) 219 S. W. 2d 795."

And in *Boca Raton Club* v. *Hotel Employees Union, Local No. 255*, 83 So. 2d 11, at Page 15, the court said:

> "It is deemed appropriate to observe that we have outlined prerequisites to lawful picketing and it is not sufficient to establish, even in court, after picketing is a reality that the putative bargaining agent had in fact, prior to picketing, been so designated by an insignificant number or, for that matter, a majority of the employer's employees."

The union contends it only has to represent "at least some of the employees". This position is untenable and contrary to Section 447.03, Florida Statutes, 1953, and the opinion of the Supreme Court of Florida in the *Sax* case, *supra*, [fol. 543] wherein the Court, said:

> "The Union must establish that the employees have chosen it as their representative."

Section 447.03, Florida Statutes, gives the employees the right "to bargain collectively through representatives of their own choosing", and, therefore, employees could lawfully designate a collective bargaining agent. *Webster's New International Dictionary*, Second Edition, Unabridged, defines the word "collective", as follows:

> "Treating a number of objects as a group, whole, or aggregate; as, a collective singular".

Therefore, in the common ordinary sense of the word, "collective" means a group acting as a unit in accord with American principles. Any unit or group consisting of more than two people must act in accordance with the wishes or desires of a majority. Therefore, to be a collective bargaining agent, a union must *establish* to the employer that it represents the majority of its employees.

The Supreme Court of the United States, in dismissing an appeal from a decision of the Supreme Court of Maine, sustained the position that a representation of 10% was insufficient to accord such union recognition. See *Pappas* v. *Stacey*, 116 A. 2d 497, appeal dismissed 76 S. Ct. 117. This was a proceeding to obtain a permanent injunction

against picketing for organizational purposes. The lower court granted the injunction and held that picketing a res- [fol. 544] taurant employing 30 persons by 3 of its employees who were union members along with others who were not employees in order to coerce its other employees to join the union, was unlawful and could be enjoined, and in said opinion the court said:

"The purpose of the strike, we repeat, is 'for the sole purpose of seeking to organize other employees of the Plaintiff . . .' A strike for organizational purposes is by definition a strike to obtain from the employer a concession which he may grant. 'A strike necessarily assumes the existence of a grievance. To right the asserted wrong is its purpose.' Keith Theatre, supra, 134 Me. at page 398, 187 A. at page 694. In this instance the purpose of the strike necessarily is to compel the employer to bring pressure upon the employees to join Local 390. For what other purpose under the circumstances of this case are the employees on strike?

* * *

"A coercive force is generated by the picketing to secure new members for the union. It is apparent that this force is applied to the employer to urge his employees to join the union to save his business, and to the employees to join to save their livelihood.

"In reaching for the employees, there is a steady and exacting pressure upon the employer to interfere with the free choice of the employees in the matter of organization. To say that the picketing is not designed to bring about such action is to forget an obvious purpose of picketing—to cause economic loss to the business during noncompliance by the employees with the requests of the union.

* * *

[fol. 545] "The employee cannot escape a share of the irreparable damage admittedly caused to the business on which his livelihood depends. Irreparable damage to employer must in any appreciable period be like damage to the employee. The defendants say in

substance to the twenty-seven nonunion workers 'join with us or we will continue to harm the business in which you are employed.'

"The picketing is at least an act of interference with the employee in the exercise of his personal rights. It violates the language and the purpose of the statute, supra, and it is unlawful."

Section 447.09, Florida Statutes, 1953, reads that "it shall be unlawful for any person: (11) to coerce or intimidate any employee in the enjoyment of his legal rights . . . " The Constitution of the State of Florida provides that a man shall have the right to work without belonging to any union. *Declaration of Rights, Section 12*:

"The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union, or labor organization; . . . "

The Constitution and statutes of the State of Florida are very similar, if not identical, with those construed by the State of Maine and the United States Supreme Court in the *Pappas* decision, *supra*.

Certainly a handful of people should not have the power to bring economic chaos upon an employer and consequently [fol. 546] *upon the nonstriking employees because they may be disgruntled. The Constitution gives the employee the right to leave his employment if he so desires but does not accord him the right to cause innocent people to suffer.*

The Supreme Court, in the *San Marino Hotel* case, styled *Thomas Jefferson, Inc.* v. *Local No. 255, et al.*, 84 So. 2nd 583, stated that the crucial day relative to representation is the day of the strike and, as said in the *Boca Raton* case, *supra*, it would do the union no good to prove in court that they had in fact prior to the picketing been designated by a majority of the employer's employees. The representation must be prior to the picketing and the establishment to the employer must be prior to the picketing. Admittedly, this union never prior to a strike notified the plaintiff with any proof of whom it represented. Can this admitted failure, meet the test established by the court in the *Saxony, Boca Raton and San Marino* cases, *supra*? The

union contends that the delivery of the cards in Court constituted notice. This cannot be so under the decisions of the Supreme Court of Florida, as the submission after the picketing begins is not even sufficient when done in Court. *Boca Raton* case, *supra.*

The evidence in all cases disclosed without contradiction that no election was held prior to the strike or walkout in conformity with Section 447.09, subparagraphs 3 and 4 of the Florida Statutes, which provide that a work stoppage [fol. 547] may be called by a majority of those to be affected thereby if such election is held by secret ballot. Therefore, the walkout and work stoppage was unlawful. There is no dispute that the employees of the hotel walked out without complying with the statutes. The statute contains no penalty provisions and there is no method or procedure by which a court could force the striking workers to return to their employment as such an order would amount to involuntary servitude contrary to the Constitution of this State and this country, and under our laws each employee is guaranteed the right to leave his employment of his own free will. The only effect of the statute is to render a minority strike or walkout contrary to the public policy of this state, and therefore, unlawful, and participation in such minority walkout deprives those who do so of the status of an employee. And it grants to the employer, the privilege of replacing the unlawful striker with a permanent employee upon whom the immediate status of employee is conferred, including the right to collective bargaining. Therefore, the employees who have the right to bargain collectively are those who are presently employed by the hotel and not those who quit their employment.

The Legislature of this state, in 1943, through the promulgation of what is now Chapter 447, Florida Statutes, established that it was against the public policy of this state to engage in a concerted work stoppage by employees to be affected thereby. Such election machinery provided the [fol. 548] majority with a method of establishing the lawfulness of a work stoppage, and is for the benefit of the employees, as well as the employer.

It is unlawful for an employer to negotiate a contract with an alleged bargaining representative, if, in fact, such bargaining representative has not been authorized by the employees to represent them. See *National Labor Relations Board* v. *Union Pacific Stages, Inc.*, 99 F. 2d, 153.

The employer, to protect himself from engaging in this unlawful conduct, has the privilege and is charged with the duty of withholding negotiations with the alleged bargaining agent until proof is adduced of the agent's authority. Even under the National Labor Relations Act such proof is required.

In the case of *Texarkana Bus Co.* v. *National Labor Relations Board*, 119 F. 2d, 480, 484, it was held that the statement of a labor organizer and a committee of employees that such organizer had been chosen as the bargaining agent of the employees, is insufficient proof to justify the employer in dealing with such alleged bargaining agent. It is pointed out by the court that the employer is under "the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other".

The court further says: "The employer cannot be required to devote his time to negotiating with every individual claiming to represent a bargaining unit, and cannot be charged with unfair practice in this regard *unless there is presented to him evidence of a substantial character* [fol. 549] *showing that the representative is in fact an authorized bargaining agency.*"

The employer, under the National Labor Relations Act, is under no obligation to bargain with a minority group of employees. A strike fomented by such minority to force the employer to negotiate and bargain with such minority, is illegal. Those engaged in an illegal strike lose the benefit of the rights conferred under the National Labor Relations Act. They lose their status as employees. The employer is privileged to employ others on a permanent basis to take the place of the striking employees. The "employer could properly discharge the striking employees". See, *National Labor Relations Board* vs. *Indiana Desk Co.*, 149 F. 2d, 987.

This brings us to the consideration of the effect of § 447.03 and § 447.09, Florida Statutes. Economic strife is recog-

nized as a matter of great public interest. The right of the unionist and non-unionist to work "is the right to live" and the "Legislature has declared that regulation of the activities and affairs of labor unions . . . organizers and other representatives" is a matter which falls within the legitimate exercise of the State's police power.

§ 447.03 confers upon employees the right to self-organization, the right to form and join labor organizations, the right to bargain collectively through representatives of their own choosing, and the right to engage in *concerted activities* to aid in collective bargaining and in the protection of the rights of the employees. Thus, the right to [fol. 550] strike (to engage in concerted acts) is guaranteed to employees in the State of Florida for the purpose of collective bargaining. This confers upon the employees the right in concert to stop work, and yet not be guilty of abandoning their position of employment. The exercise of this statutory right to strike "is not to be construed as a renunciation of the employment relation". These strikers "remain employees for the remedial purposes" sought to be accomplished by their concerted action. In other words, when a strike is accomplished in accordance with this statute conferring the right to strike, the action of the strikers in quitting their employment may not be construed by the employer as a renunciation of their employment. The employer and employee relationship awaits the outcome of the economic struggle.

To engage in a strike, walkout or cessation of work, "without the same being authorized by a majority vote of the employees to be governed thereby" constitutes "a mere quitting of work". When the employees struck, under such circumstances, "they took a position outside the protection of the statute and accepted the risk of the termination of their employment upon grounds aside from the exercise of the legal rights which the statute was designed to conserve."

See, *National Labor Relations Board* v. *Fansteel M. Corp.*, 59 S. Ct. 490, 306 U. S. 241, 256-7.

The statute is one providing for the regulation and protection of civil rights and therefore does not partake of the [fol. 551] nature of a criminal statute. By engaging in an unauthorized strike an employee loses his status as an

employee. He then has the same rights and is subject to the same liabilities as a third person. See, *Hotel & Restaurant Employees' International Alliance, etc.* v. *Wisconsin Employment Relations Board, et al.*, 294 N. W. 632, 642, and 295 N. W. 634.

In this case, it is stated:

> "The petitioners complaint that the characterization of the acts of employees as unfair labor practices cannot be made to depend on the action of a majority of a collective bargaining unit; that the legislature cannot place it within the power of a majority of the collective bargaining unit to authorize a strike. This argument is an attack upon a principal which is fundamental in the attempt of the legislature and congress to regulate labor relations. The principle upon which authorized collective bargaining depends is that the rule of the majority within an appropriate collective bargaining unit shall bind the minority. We see no way by which the principle of collective bargaining can be maintained unless this right of a majority of a collective bargaining unit to speak for the unit including the minority is maintained. A bargain on behalf of a collective bargaining unit amounts to nothing if, after it is made, the individuals or some of them comprising that unit are not affected thereby. This principle is explicit in the National Labor Relations Act, 29 U.S.C.A. z 151 et seq., in the Railway Labor Peace Act, 45 U.S.C.A. § 151, et seq., and in the act now under consideration. If the majority of a collective bargaining unit can thus coerce the minority in the matter of bargaining, we see no reason why the Legislature may not vest in a majority of the unit power to determine whether such [fol. 552] conditions obtain in the employment as warrant the calling of a strike in an effort to remedy them. There is no more delegation of legislative power in the one case than there is in the other. It is in most cases the same majority that made the bargain for the unit that determines whether a strike shall be called . . ."

As pointed out by the Supreme Court of the United States in the *Fansteel* case, *supra*, the employer was privileged to

permanently fill the positions of the striking employees. And, as pointed out by the Supreme Court of the United States in the case of *National Labor Relations Board* v. *Sands Mfg. Co.*, 59 S. Ct. 508, 514, 306 U. S. 332, 344, the employer

> "was at liberty to treat them (employees) as having severed their relations with the company . . . and to consummate their separation from the company's employ by hiring others to take their place".

And, "as the employer had lawfully secured others to fill the place of the former employees . . . the old union and its shop committee were no longer in a position . . . to demand collective bargaining on behalf of the company's employees."

The records in these cases disclose that the employers have permanently filled the positions of the unlawful strikers. This having been accomplished, the collective bargaining rights under the statute are now possessed by the new employees, not the striking employees. The union does not contend that it represents the new employees, and therefore, a recommencement of the picketing clearly would be illegal, [fol. 553] especially when its primary purpose could only be "to compel the discharge of the present lawful employees and the reinstatement of" the unlawful strikers. See, *Basch & Sons, Inc.* v. *Retail Union of New Jersey, Local 108 (N. J.)*, 99 A. 2d, 519. Such a purpose would be illegal, and would violate the right of the present employees to live and their right to work as provided by Chapter 447, Florida Statutes, and "would deny and abridge" the right of such employees to work, as is guaranteed to them by Article 12 of the Declaration of Rights of the Constitution of the State of Florida.

Point III

The Effect of the Taft Hartley Act on the Dispute Involved Herein.

The appellants contend that their activities come within the provisions of the Taft Hartley Act and that the Federal Government has preempted this field of labor management relations. This overlooks the fact that the Congress in

enacting this law, recognized that the state governments would retain jurisdiction over certain labor controversies. *Title 29, Chapter 7, United States Code.*

The appellants herein have on more than one occasion petitioned the National Labor Relations Board to take juris- [fol. 554] diction of these local labor disputes and on each and every occasion the regional office and the full Board has refused so to do, the latest such refusal being reported in *In Re: Miami Beach Hotel Association & Hotel Employees' Union, Local #255, #10RC3135*, opinion dated August 26th, 1955. Therefore, if you follow the argument advanced by the appellants, that the state court was ousted of jurisdiction in these disputes and recognize that the Federal Government has refused to exercise jurisdiction, then there would be no forum in which either management or labor could present their grievances and this position is untenable under the circumstances.

* * * * * * *

[fol. 560] CLERK'S CERTIFICATE TO FOREGOING TRANSCRIPT (omitted in printing).

[fol. A] IN THE SUPREME COURT OF FLORIDA

Case No. 28,244

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. OF L.), et al, Appellants,

v.

LEEVLANS CORPORATION, Appellee.

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* * * * * * *

TRANSCRIPT OF RECORD—Filed April 5, 1956

J. W. Brown and Gramling & Gramling, 226 Shoreland Building, Miami, Florida, Attorneys for Appellants.

Sibley & Davis, Thomas H. Barkdull, Jr., 605 Lincoln Road, Miami Beach, Florida, Attorneys for Appellee.

[fol. 1]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 173667-I

LEEVLANS CORP., Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. OF L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRI MICHEL, as Business Agents and Officers thereof, Defendants.

COMPLAINT FOR INJUNCTION AND OTHER RELIEF—Filed April 18, 1955

Comes Now the plaintiff, Leevlans Corp., by its undersigned attorneys, and brings this, its Complaint for Injunction and Other Relief against the defendants, Hotel Employees Union, Local No. 255 (A. F. of L.) and Albert H. Berlin, Clarence L. Smith, and Henri Michel, as Busi-

ness Agents and Officers thereof, and for such complaint, plaintiff alleges:

I.

Plaintiff is a duly organized corporation with its principal place of business in Miami Beach, Dade County, Florida.

Defendant, Hotel Employees Union, Local No. 255 (A. F. of L.) is a labor organization within the intent and purview of the laws of the State of Florida; Albert H. Berlin, Clarence L. Smith and Henri Michel, are each residents of Dade County, Florida, and are each over the age of 21 years; said individual defendants, and each of them, are the duly authorized business agents and officers of said labor organization.

[fol. 2] II.

Plaintiff is the operator of an ocean front hotel consisting of approximately 252 rooms, located at 3101 Collins Avenue, Miami Beach, Florida, and known as the Sans Souci Hotel. This hotel was constructed and equipped by the plaintiff at a total cost to it of over $5,000,000.00. Said hotel has been in operation for approximately 5 years, and Plaintiff operates in connection therewith, a cocktail lounge, dining room, coffee shop, swimming pool and other various facilities usual or necessary in the operation of a first-class hotel. Plaintiff's hotel has enjoyed the very finest reputation, and it has earned an excellent and valuable good will. The plaintiff's hotel business has become lucrative. The Sans Souci is recognized as one of the leading ocean-front hotels in the Miami Beach area, and has an enviable nation-wide reputation. It caters to the public by maintaining a dignified atmosphere, serving only the highest grades of foods and beverages, and by rendering superlative service to its patrons and guests.

III.

Employed at plaintiff's hotel are approximately 310 persons, who perform services as cooks, waiters, bell boys, maids, elevator operators, and other similar duties nor-

mally required to operate and maintain a first-class hotel. The plaintiff has had no labor dispute with its employees in regard to wages, working conditions or any other phase of employer-employee labor relationship existing between the plaintiff and its employees. The plaintiff has enjoyed the most cordial labor relations with its employees, and has at all times afforded to its employees a satisfactory standard of pay and working conditions. Plaintiff has received no complaints from its employees in reference to wages, hours, or working conditions and is wholly unaware of any labor dispute of any nature, character or description existing between it and its employees.

[fol. 3] IV.

The Plaintiff believes and is informed that sometime early in 1955, one or two carpet-bagger labor organizers arrived in Miami Beach with the announced intention of stirring up labor discord between employers and employees at several of the hotels in Miami Beach, with the purpose in mind of creating for themselves, a lucrative labor organization by which said carpet-bagger organizers could reap a harvest of money from the employees of the hotels on Miami Beach through dues which the said organizers expected to charge said employees in the event they could inveigle said employees to join with said organizers in creating a labor union. These northern organizers announced that they intended to form labor organization, and they have named their alleged organization, Hotel Employees Union, Local No. 255, A. F. of L. Said union had no members except the two professionals who arrived with the announcement that they constituted said labor organization.

Since said time, the two organizers, one of whom is David Herman, and the other is one of the defendants, Albert H. Berlin, have utilized all the pressure tactics known to labor organizers to force and intimidate the employees of the plaintiff to become members of said labor organization. Their efforts in enlisting membership has been a distinct failure, so the said professionals determined to place pressure, intimidation and threats upon the hotel owners, in order to force said hotel owners through eco-

nomic sanctions, to sign contracts with the said alleged organization, and thus use said contracts as a basis to force the employees of the hotels to become members of said alleged union.

To this end, said David Herman contacted Saul Cohen, president of the Miami Beach Hotel Owners Association, and demanded that the said Cohan negotiate with and line [fol. 4] up all of the owners of the first-class ocean front hotels on Miami Beach, to execute labor contracts with the said alleged union, thus recognizing said union as representing the employees of the said hotels, and in this fashion, to enable the said union to procure membership among the employees of said hotels. Said Herman threatened Mr. Cohen by stating that unless the Hotel Association actively enlisted the hotel owners to join the said union by giving it contracts as aforesaid, that the said David Herman would, through economic sanction such as picket lines around said hotels, cause them great economic loss, and thus force them, through such economic loss and pressure, to give to the said union contracts covering the employees in said hotels, who were not, in fact, members of or represented by the said alleged union in any fashion whatsoever. The Miami Beach Hotel Owners Association, and its president, had no power or authorization to represent the owners of the individual hotels in reference to any labor matters involving the owners of any particular hotel.

V.

The plaintiff has had no dealings whatever with any members of the Hotel Employees Union, Local No. 255, A. F. of L., save and except as hereinafter stated. Said union has never sought to negotiate with the plaintiff as the representative of Plaintiff's employees; in fact, Local No. 255 does not represent the vast majority of the plaintiff's employees. No labor controversy or negotiations in reference to any labor dispute has ever been instituted, inaugurated, or carried on between the plaintiff and the said alleged union, and the said alleged union has never sought to bargain with the plaintiff as the alleged representative of plaintiff's employees, and the plaintiff alleges

that the said union has never been authorized by the vast majority of its employees to represent them.

[fol. 5] VI.

The plaintiff has never refused to recognize the defendant union, and has never refused to negotiate with said union; the plaintiff has never been requested by the said union to negotiate with it, and has never been advised by the said union that the union is the bargaining agent for plaintiff's employees, nor has the plaintiff been advised by said union that it is the labor organization representing plaintiff's employees, save and except that on Saturday afternoon, April 16, 1955, at approximately 3:30 p.m., Morris Lansburgh, the secretary of the plaintiff corporation, received a phone call from one proporting (sic) to be the aforementioned David Herman, at the Sans Souci Hotel, at which time the said Lansburgh was advised by the one identifying himself as Herman that it was up to him, Lansburgh, to determine whether his employees would walk out or remain on the job at his hotels, the Sans Souci and the Sherry Frontenac, another ocean front hotel located on Miami Beach in which the said Lansburgh has an interest, implying that if the hotels recognize the aforementioned union, there would be no walk out. The said Lansburgh advised the party calling that the decision could not be solely his as there were other parties interested in the operations of both the hotels. The party calling, who identified himself as Herman, demanded a reply by 3:45 p.m. of the same afternoon. Said Lansburgh advised the caller that principals connected with both hotels were located in cities outside the State of Florida and, in fact, gave to the caller the Chicago telephone number of the president of the operating corporation of the Sans Souci Hotel.

In truth and in fact, no demand or grievance of any nature whatsoever of the plaintiff's employees has, up to the present time, been made of or placed before the plaintiff, its officers or agents. Notwithstanding said union, at [fol. 6] 6 a.m. on Saturday, April 17, 1955, placed a picket line consisting of six or more pickets in front of the plaintiff's place of business, and each of said pickets in said line carried a placard or poster which falsely and fraudu-

lently alleged that the plaintiff had refused to negotiate with the defendant union. Each of said placards carried the following words:

> "This hotel refused to negotiate with Hotel Employees Union, Local #255, American Federation of Labor, 1575 Washington Avenue, Miami Beach."

Such representation made by said union is false and untrue, and the said union knows that the said statements are false and untrue. Said statements are made for the purpose of deceiving the public. The picket line was placed around the plaintiff's place of business for an unlawful and illegal purpose in that the defendant union is carrying out its threat to the president of the Miami Beach Hotel Owners Association by placing economic pressure on the plaintiff, thereby seeking to cause the plaintiff, by loss of revenue thus occasioned, to execute a labor contract with the said union. This conduct of the said defendant union is unlawful, and is contrary to the Constitution and the Laws of the State of Florida, in that the said defendant union has never been certified to the plaintiff as the lawful bargaining agent of the plaintiff's employees, and said union has never approached the plaintiff seeking to bargain with plaintiff as the authorized bargaining agent of the plaintiff's employees, and in that no demand for collective bargaining has been made by said union upon the plaintiff.

Thus, the defendant union, through its unlawful conduct, seeks to force the plaintiff to execute a contract with it in order that said union might use the said contract to coerce and force plaintiff's employees to become members of said union.

[fol. 7] VII.

On Tuesday evening, April 12, 1955, the defendants called a meeting of employees of the plaintiff hotel, but at said meeting, defendants were unable to procure the presence of a majority of plaintiff's employees. Notwithstanding this fact, defendants urged some of plaintiff's employees to strike, walk out, and cease work at the plaintiff's place of business, and at the said meeting, enlisted an agreement from a small minority of plaintiff's employees to strike and

cease work on the following morning. This conduct on the part of defendants was unlawful and directly in conflict with the provisions of §447.09, subparagraph 3, Florida Statutes, in that their agreement to strike and cease work was not authorized by a majority vote of the Plaintiff's employees to be governed thereby, and there was no election by secret ballot, as provided by §447.09, sub-paragraph 4, of Florida Statutes.

VIII.

In the early morning of April 17, 1955, the defendants and their henchmen congregated at the entrance to the plaintiff's place of business in large numbers, and as a majority of plaintiff's loyal employees arrived for work, each was accosted by the group and urged to join the defendants' strike movement. Some of the employees were threatened if they did not cease to work, and many of them were intimidated by defendants and their associates, agents and servants. As a matter of fact, the pickets have beaten some of the employees who returned to work, and several employees have received innumerable anonymous telephone calls of threats of all manner, of bodily harm and injury to their person, should they return to the plaintiff's place of business. Most of the plaintiff's employees who refused to attend work on April 17, 1955, did so because of coercion and intimidation placed upon them by the defendants, and [fol. 8] the large number of persons they had gathered at the entrance to the plaintiff's place of business in an effort to discourage and threaten plaintiff's employees as they arrived. All of this was unlawful and contrary to the provisions of § 447.09, subsection 11, Florida Statutes.

IX.

The defendant union is maintaining the picket line around the premises operated by the plaintiff; said picketing is unlawful and is in violation of §447.09, subsection 13, Florida Statutes, in that the said union maintains more that (sic) six pickets in the short space surrounding the plaintiff's place of business. Said pickets have not engaged in peaceful or reasonable picketing, and the same has become unlawful in that the pickets maintaining the picket line are

attempting to stop patrons of plaintiff's hotel from entering or leaving the premises, and are using abusive and obscene language, and are harassing and threatening the plaintiff's patrons and guests.

X.

The picket banners carried by said pickets make false, unlawful, and fraudulent statements, in that said banners charge the plaintiff with refusing to negotiate with the defendant union, although the said union knows the statements to be untrue and false. Thus, the said union, through false and misleading picket banners, attempts to induce guests and patrons of the plaintiff's hotel to leave, and through such fraudulent misrepresentations, defendants seek to destroy the plaintiff's business and injure the plaintiff in the operation of its business.

XI.

By reason of the unlawful conduct of the defendants, members of the public are being deterred and stopped from patronizing the plaintiff's place of business, which is caus- [fol. 9] ing plaintiff irreparable loss and damage. There is no method or means by which the exact loss may be determined and there is no method or means of determining the full damage caused by such false and fraudulent conduct of the said defendant union.

XII.

The defendant union, and its representatives, threw up its picket line without notice or opportunity for the plaintiff to present its cause to the Court to determine the right of the union to cause plaintiff the damage it is presently suffering. Plaintiff is entitled to restoration of status quo ante by temporary injunction until such time as the Court may declare and determine whether or not the union is entitled to engage upon the said conduct, which is aimed at destroying the plaintiff's business.

Forasmuch, Therefore, as plaintiff is without remedy in the premises, save and except in a Court of Equity, and to the end that justice may be done, plaintiff prays:

(a) That this Court temporarily enjoin and restrain the defendant union forthwith from maintaing (sic) said pickets or picket line at the plaintiff's place of business, and that the Court restore to plaintiff its status quo ante, pending a determination of the right of the defendant union to picket the plaintiff's business.

(b) That this Court temporarily enjoin and restrain the defendant union, and its agents, officers, representatives, servants and employees, including the defendants, Albert H. Berlin, Clarence L. Smith, and Henri Michel, from picketing or causing to be picketed or aiding and abetting in the picketing or authorizing the picketing of plaintiff's place of business, or of advertising or publishing any false and scandalous statements in reference to the plaintiff's business, or the plaintiff corporation, or its officers, agents, representatives and employees, or by any act or method of boycotting or injuring the same, either by picket-
[fol. 10] ing or otherwise.

(c) That this Court make such injunctions permanent upon final hearing.

(d) That this Court grant such other and further relief as to it may seem meet and proper.

/s/ Morris Lansburgh (Plaintiff)

Sibley & Davis, Attorneys for Plaintiff, 605 Lincoln Road, Miami Beach, Florida.

Thomas H. Barkdul

Duly sworn to by Morris Lansburgh, jurat omitted in printing.

* * * * * * *

[fol. 12]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

AMENDMENT TO BILL OF COMPLAINT FOR INJUNCTION AND OTHER RELIEF—Filed April 27, 1955

Comes Now the plaintiff, Leevlans Corp., by its undersigned attorneys, and files this, its Amendment to its Bill of Complaint for Injunction and Other Relief against the Defendants, as a matter of course before a responsive

pleading has been served, by adding thereto Paragraph XIII:

XIII.

The picketing being conducted by the union is unlawful in that said picketing is being conducted in a violent and unreasonable manner. On more than one occasion, the pickets have abused the guests and employees of the Plaintiff's hotel with obscene language, threats and vile names. [fol. 13] On many occasions, employees coming to and from their work at the hotel owned by the Plaintiff and at other times have been intimidated and threatened with bodily harm and injury in the event that they continued to work at the hotel. Telephone operators employed in the hotel have been harassed, threatened, abused, and subjected, over the telephone, to threats of violence and obscenity by supporters of the union. Physical violence has been afflicted upon several of the employees working at the Plaintiff's hotel by members of the defendant union. These occurances (sic) have resulted in wide-spread terror, fear, and intimidation among the employees working at the hotel owned by the plaintiff. The defendant union has continued to intimidate employees of the plaintiff to the point where many of them have stayed away from their work because of fear even though they desired to continue active employment at the plaintiff's hotel.

As a part of its plan to terrorize and intimidate the employees of the plaintiff into staying away from their work, members of the defendant union have taken down the numbers of the license plates of the employees' cars, and have taken still photographs and moving pictures of employees in the hotels entering, leaving, and during their working hours.

The pickets being conducted by the union is unlawful in that the defendant (sic) have represented said picketing as being the result of a strike.

Sibley & Davis, Attorneys for Plaintiff, By Marion E. Sibley.

Morris Lansburgh, Plaintiff.

[fol. 14] *Duly sworn to by Morris Lansburgh, jurat omitted in printing.*

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

ORDER DENYING PLAINTIFF'S APPLICATION FOR TEMPORARY INJUNCTIVE RELIEF—May 11, 1955

This Cause came on regularly for hearing upon the plaintiff's application for temporary injunctive relief in [fol. 15] accordance with the prayers of the verified complaint as amended. The Court has heard and considered the testimony adduced on behalf of the plaintiff, has read and considered the evidenciary (sic) exhibits of the plaintiff, and has heard and considered arguments of counsel for the respective parties. In consideration thereof, the Court is of the opinion and finds that the plaintiff has not made a sufficient showing for injunctive relief on the basis of the manner of the picketing and the method in which it is being conducted.

It Is Accordingly Ordered, Adjudged and Decreed that the plaintiff's application for a temporary injunction be and it is hereby denied, without prejudice; and

It Is Further Ordered that, the defendants not having filed answers or other pleadings to the complaint, the allegation or contention made by the plaintiff that the picketing is conducted for an unlawful or illegal purpose is not considered nor passed upon, but determination of this question is reserved until final hearing.

Done and Ordered in Chambers, at Miami, Florida, this 11th day of May, 1955.

Robert L. Floyd, Circuit Judge.

[fol. 16]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY No. 178667-I

LEEVLANDS CORPORATION, Petitioner,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLING, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents, Intervenors.

ANSWER—Filed May 9, 1955

Come Now the defendants and make this their Answer to the complaint and answering, say:

1. They admit the identity of the parties hereto as alleged in Paragraph 1.

2. They are without knowledge as to the matters and things set forth in Paragraph 2, but aver that if the said hotel enjoys a fine reputation and valuable good will that such asset has been created in large measure by the excellence of performance by the many employees of said hotel while said employees are yet not recognized by the plaintiffs through their duly designated representative of their own choosing, to wit: Hotel Employees' Union Local 255; and that the purpose of this instant litigation is to deprive the said employees who have contributed so richly to the success of plaintiff hotel of their constitutional and stat- [fol. 17] utory guarantees of being represented for collective bargaining purposes by representatives of their own choosing.

3. Defendants admit that the said hotel employs many people as cooks, waiters, bell boys, maids, elevator operators and other similar duties normally required to operate and maintain a hotel, but deny the remaining allegations of Paragraph 3 of the complaint and aver that the employ-

ees of plaintiffs' hotel have long been dissatisfied with their wages, working conditions and other phases of the employer-employee labor relationship and aver that plaintiff has suffered a large turnover in the employees, because of the sub-standard rate of pay, working conditions, adjustment of grievances and other inter-related factors; and would aver that the many complaints on the part of the employees have been properly brought to the representatives of their own choosing as guaranteed by law, to-wit: Hotel Employees' Union Local No. 255, A. F. of L; but that plaintiff hotel has at all times refused to negotiate or settle the many differences and grievances existing and under which the employees are now suffering.

4. Your defendants, not waiving their Motion to Strike Paragraph 4 of the complaint, would show that the individual officers of this union names in the complaint have been bona fide residents of this jurisdiction for many years respectively, to-wit:

[fol. 18]	Al Berlin	thirty-two years
	Clarence L. Smith	eighteen years
	Harry Mischel	eighteen years

and are local home owners, maintaining their families as an integral part of Dade County, Florida, and that the said union was chartered by its International Union March 1, 1954 with a membership at that time of approximately thirteen hundred members; and that the said union has a present membership of approximately five thousand members; that because of the tactics of the plaintiff employers and other employers in the Community, acting in concert with the plaintiff in this cause, the employees of this plaintiff were denied representation in labor matters by agents of their own choosing and their wages were held far below existing standards in communities of similar size and nature; that hours per week are longer and more arduous than prevail in all similar establishments in other communities; that no machinery is tolerated by plaintiff employer for adjustment of bona fide grievances and that the employees of plaintiff generally were oppressed and militated against to such extreme that their anguished

cries were heard in Cincinnati, Ohio, whereby and whereupon the Hotel and Restaurant employees and Bartenders International Union, consistent with its gracious objectives, did lend aid, comfort and support to the oppressed employees by lending them the services of said Dave Herman for the purpose of appealing to plaintiffs and their respective consciences, if any, in the hope that these [fol. 19] employees may be liberated from the economic bondage in which they are currently unmercifully shackled.

5. Your defendants deny that they have never sought to negotiate with the plaintiff as the representative of plaintiff's employees and aver that Local 255 represents the vast majority of plaintiff's employees. Defendants admit that plaintiff has had no dealings whatever with any members of defendants' organization, but aver that the plaintiffs have failed and refused to have any dealings whatsoever with members of the Hotel Employees Union Local No. 255 A. F. of L., as a result of refusal to recognize the constitutional and statutory guarantees of the many employees in the matter of self-orgnization (sic) and collective bargaining; and your defendants deny each and every of the remaining allegations of the said Paragraph 5.

6. These defendants answering Paragraph 6 deny that the plaintiffs have never refused to recognize the defendant union and aver to the contrary that the very existence of this litigation and of the picketing line complained of in Paragraph 6, conclusively establishes that there has been no recognition of the bargaining agent or the labor representative of the employees and in making answer to Paragraph 6, would respectfully direct the attention of the court to plaintiff's own words in the first sentence, of Paragraph 5 of the Complaint, to-wit: "The plaintiffs have had no dealings whatever with any members", etc., and your de- [fol. 20] fendants aver that the cause of the picketing complained of in Paragraph 6 is admitted by plaintiff in the aforequoted opening words of Paragraph 5; and these defendants deny that they are picketing to require the plaintiff hotel to execute a labor contract and aver that no proposed labor contract has been submitted to plaintiffs,

for that plaintiffs have failed and refused to recognize the union or to in any manner negotiate or to consent to negotiate in the matter of a labor contract whatsoever; and these defendants deny that they seek to force the plaintiff to execute a contract in order to coerce and force plaintiffs' employees to become members of said Union for that this union undertakes to represent only such employees as have duly designated this union as the representative of their own choosing, as provided for in FSA 447.03.

Your defendants admit the picketing but aver that the picketing is for the purpose of appealing to the friends and sympathizers of these defendants and its members and is an exercise of the freedom of speech as guaranteed to these defendants and the members of the defendant union, as set forth in Chapter 447.13 Laws of Florida.

7. Your defendants deny each and every of the material allegations of Paragraph 7, and deny that any meeting was had for the purpose of conducting a strike ballot, or that any strike ballot was had, secret or otherwise, and that no action was taken whatsoever as would come within the [fol. 21] scope of FSA 447.09 as alleged in the complaint.

8. Defendants deny each and every of the material allegations of Paragraph 8 as fully and completely as though each were herein set forth and severally categorically denied.

9. Defendants deny each and every of the material allegations of Paragraph 9 as fully and completely as though each were herein set forth and severally categorically denied.

10. Defendants deny each and every of the material allegations of Paragraph 10 as fully and completely as though each were herein set forth and severally categorically denied; and

11. On information and belief, your defendants aver that members of the public are being deterred and stopped from patronizing the plaintiff hotel, but would aver that if such is the case it is only because friends and sympathizers of oppressed working people have determined to withhold

their patronage from a place of business that refuses to negotiate with the bona fide representative of the employees of plaintiff hotel, contrary to the established American way of life and contrary to the spirit and intent of the public policy of the great United States of America, as expressed in the several pertinent Congressional Acts on said subject as well as enunciations of the Supreme Court of the United [fol. 22] States of America and contrary to the policy of the State of Florida as enunciated in Article 12 Declaration of Rights, Constitution of Florida and FSA 447.01 (1) and 447.03, but your defendants aver that plaintiffs are bound by their several respective utterances and releases to the Press, wherein they aver in effect that they are experiencing "business as usual".

12. Defendants deny each and every of the material allegations of Paragraph 12 as fully and completely as though each were herein set forth and severally categorically denied.

Affirmative Answer

Your defendants, having made full, true and complete answer to the complaint, would make their affirmative answer as follows: Your defendants aver each and every of the allegations of the foregoing answer as though herein at this point repeated and aver in addition thereto that the plaintiffs seek to maintain this litigation in a court of equity and good conscience with unclean hands, for that the plaintiff has denied to its many employees the statutory and constitutional guarantees of representation and collective bargaining as afore set forth and for endeavoring to frustrate and to bring to naught the provisions of the aforesaid statutory Constitutional clauses and enactments, contrary to equity and good conscience.

That your defendant union as the spokesman and representative of its members who are employed by plaintiff, has long sought to bring about negotiations and the plain- [fol. 23] tiff has failed and refused to respond to the invitations and solicitations of this defendant union, acting on behalf of its members and that the picketing became necessary in order to appeal to the friends and sympa-

thizers of the members of defendant union who are employed by plaintiff, in an endeavor to cause plaintiffs to recognize your defendant union as a lawfully constituted bargaining agent, as aforesaid; that in the utmost of good faith, your defendant union has invited plaintiffs, to hold an election by secret ballot under any fair and impartial authority and by such secret ballot, demonstrate to plaintiff the bona fidees (sic) of defendant union's assertion concerning majority representation.

That plaintiff seeks to deprive these defendants and the members of defendant's union of the constitutional guarantee of freedom of speech, as provided for in Article 1 and XIV Bill of Rights Constitution of the United States of America and the similar provisions of the Declaration of Rights of the Constitution of the State of Florida and the Guarantee of Chapter 447.13 Laws of the State of Florida.

Wherefore, your defendant union prays this Honorable Court for the appointment of a Commissioner to hold an election and ascertain and report to this Honorable Court the truth and accuracy of the foregoing statement as to majority representation by the said Union and that this Honorable Court enter its Declaratory Decree declaring [fol. 24] this Union to be in fact the duly authorized representative of the majority of plaintiff's "service" employees and that upon judicial ascertainment and Declaratory Decree, that this Honorable Court by its mandatory injunction, require the plaintiff to negotiate and bargain in good faith with this Union on behalf of the members of the Union, who are the employees of plaintiff, as is contemplated by Chapter 447 of the Laws of the State of Florida, together with Section 12 of the Bill of Rights, Constitution of the State of Florida and to deny the relief sought in the original complaint.

Fuller Warren; Warren, Klein & Moore; Gramling & Gramling; J. W. Brown, by /s/ Carrington Gramling, Solicitors for Defendants, 224 Shoreland Building, Miami, Florida.

[fol. 25]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY No. 178667-I

LEEVLANDS CORPORATION, Petitioner,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH, and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

ANSWER TO AMENDMENT OF BILL OF COMPLAINT—
Filed May 9, 1955

Come Now defendants and deny each and every of the material allegations of the Amendment to Bill of Complaint, as fully and completely as though each such averment was herein set forth and each severally categorically denied.

Fuller Warren; Warren, Klein & Moore; Gramling & Gramling; J. W. Brown, by /s/ Carrington Gramling, Solicitors for Defendants, 224 Shoreland Building, Miami, Florida.

[fol. 26]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY NO. 178667-I

LEEVLANDS CORPORATION, Petitioner,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

SUPPLEMENTAL ANSWER—Filed May 27, 1955

Come Now the defendants and make this their Supplemental Answer and would respectfully show unto this Honorable Court that the allegations of the Complaint and the prayer for relief in said complaint predicated upon such allegations alleging and averring a failure on the part of your defendants to meet the requirements of 447.09 (3 and 4) seek only to deprive your defendants of their constitutional guarantees of freedom of speech and to impose upon the individual members of the defendant Union an involuntary servitude contrary to the provisions of the 1st, 13th and 14th Amendments of the Constitution of the United States of America for that the requirement of a majority vote, by secret ballot of all employees to be affected by a proposed strike would be to abridge and deprive each individual of his constitutional right to speak freely [fol. 27] his opinions and to refrain from working, individually or in concert with others contrary to the aforesaid Constitutional provisions; that the said Statute would impose a prior censorship upon the right to freely express one's own opinions and to refrain from working and to make known the facts of a labor dispute; that the provisions of said Statute if applied to the facts of this instant cause so as to grant the relief prayed for by the plaintiffs would be to abridge these defendants and the members of the Union of their Constitutional guarantees as aforesaid.

Fuller Warren; Warren, Klein & Moore; Gramling & Gramling; J. W. Brown. By /s/ Carrington Gramling, Solicitors for Defendants, 224 Shoreland Building, Miami, Florida.

Certificate of service (omitted in printing).

[fol. 28]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 178667-I

LEEVLANDS CORPORATION, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

PRELIMINARY INJUNCTION—June 2, 1955

It appearing that the Supreme Court of Florida, by its opinion and decree rendered on June 1, 1955, granted certiorari as to that part of my order entered in this cause on May 11, 1955, which deferred a ruling upon the question whether or not the picketing conducted by the defendants was being carried on for an unlawful purpose, and remanded this cause with directions to me to enter a temporary restraining order on the present status of the case without further proceedings.

Accordingly, It Is Hereby Ordered, Adjudged and Decreed as Follows:

1) That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or [fol. 29] anyone acting in conspiracy with the defendants, and all affiliated organizations, be and they each are hereby enjoined and restrained until further order of this Court from picketing or causing to be picketed the Sans Souci

Hotel, 3101 Collins Avenue, Miami Beach, Florida, its environs or approaches.

2) That the defendants, and each of them, and their servants, agents, officers, organizers, and employees, or anyone acting in conspiracy with the defendants, and all affiliated organizations, be and they each are hereby enjoined and restrained until further order of this Court from publishing or causing to be published any statements to the effect that a strike, walkout or cessation of work is in effect at the Sans Souci Hotel, or that the plaintiff refuses to negotiate or recognize the defendants or affiliated organizations as a collective bargaining agent of the employees of the Sans Souci Hotel.

3. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, and all affiliated organizations, be and they each are hereby enjoined and restrained until further order of the Court from carrying or causing to be carried any signs, placards or propaganda of any nature, kind or description in front of the Sans Souci Hotel, its environs or approaches.

4) That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, and all [fol. 30] affiliated organizations, be and they each are hereby enjoined and restrained until further order of the Court from molesting, interfering with, intimidating, coercing or directing any force or violence towards the plaintiff, its officers, servants, agents, employees, representatives, or its property.

5) That the plaintiffs shall file herein an injunction bond payable to the defendants, in the principal amount of Twenty-Five Hundred Dollars ($2,500.00) with good and sufficient surety, to be approved by the Clerk of this Court and conditioned as required by law to pay all costs, damages and expenses which may be suffered by the defendants by reason of the issuing of this injunction, if the injunction shall be dissolved or if the complaint upon which it was granted be dismissed.

Done and Ordered at Miami, Florida, this 2nd day of June, 1955.

/s/ Robert L. Floyd, Circuit Judge.

[fol. 31]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FORD (sic) DADE COUNTY

IN CHANCERY No. 178667-I

LEEVLANDS CORPORATION, Petitioner,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

MOTION TO VACATE TEMPORARY RESTRAINING ORDER—
Filed June 2, 1955

Come now the defendants and move this Honorable Court to vacate the Temporary Restraining Order heretofore entered on May 28, 1955, and as grounds for said motion would respectfully show unto this Honorable Court that the defendants are ready, willing and able to make immediate showing of all matters and things not heretofore considered by the Court and required to be heard by the Supreme Court of Florida in its Opinion of May 27, 1955 in that recent Certiorari wherein Sax Enterprise, Inc. was petitioner and defendants herein were respondents.

And your defendants pray an immediate hearing thereon.

Fuller Warren, Gramling & Gramling, J. W. Brown, Solicitors for Defendants. By /s/ Carrington Gramling, 224 Shoreland Bldg., Miami, Florida.

[fol. 32] Certificate of service (omitted in printing).

[fol. 33]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 178667

LEEVLANS CORP., Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRI MICHEL, as Business Agents and Officers thereof, Defendants.

ORDER VACATING AND DISSOLVING TEMPORARY INJUNCTION—
June 17, 1955

This matter was before this Court previously on petition for temporary injunction. Upon this petition being denied a petition for certiorari was filed and granted by the Supreme Court of Florida in which the Circuit Court was directed to enter a temporary restraining order, which was done. See opinion filed May 27, 1955.

Thereafter, the defendants' answer was filed along with other pleadings filed by both plaintiff and defendants. A motion to vacate or dissolve the injunction was filed and the testimony of witnesses was heard at two all day hearings on the motion to vacate.

This Court having examined the files, read the testimony given at the former hearing on petition for temporary in- [fol. 34] junction and having heard the testimony given at the hearing on the motion to dissolve the temporary injunction finds:

On the 18th day of April, 1955, a large number of persons were employed at the hotel operated by the plaintiff called the Sans Souci Hotel in the City of Miami Beach, Florida. Some of these employees, comprising less than a majority, were members of the defendant union or had designated the defendant union as their bargaining agent or representative to negotiate with their employer in all matters per-

taining to wages, hours and working conditions. A representative of the local union, Mr. Dave Herman, had called on the executive president of the Miami Beach Hotel Association, an association to which the plaintiff belonged, and was asked to negotiate or discuss the employees' working conditions. Mr. Herman was referred to Mr. Saul Cohen, the incoming president of the association. A discussion was held with Mr. Cohen by Mr. Herman about negotiations but to no avail. Letters, in evidence, were sent to the association and published in the local newspapers about the desire to negotiate. Mr. Lansburgh of the Sans Souci Hotel was a member of the Board of Directors of the association and was sent such a letter.

There is no doubt in the Courts mind that the plaintiff knew of the effort on Mr. Herman's part to discuss negotiations for such of plaintiff's employees as he represented.

There is no further doubt that the plaintiff was by his evasive tactics refusing to negotiate and did, in fact, refuse to negotiate.

[fol. 35] On the 17th day of April, Mr. Herman called Mr. Lansburgh at about 3:00 o'clock P. M. and asked him if he would negotiate and was informed that Mr. Lansburgh would have to talk with his partner. When told his answer would have to be given by 4:00 o'clock P. M. or picket lines would be established, Mr. Lansburgh could not or would not give an answer. Picket lines were started in front of the Sans Souci Hotel at 6:00 o'clock A. M. on the 18th day of April, 1955, by representatives of the union.

A number of the employees including union members refused to cross the picket lines established by the union. Later, some employees, not then members of the defendant union, joined the union or designated the union as their bargaining agent.

As has already been held by the lower Court and affirmed by the Supreme Court the picketing was peaceful. The placards displayed by the pickets had these words on them:

> "This hotel refused to negotiate with Hotel Employees Union, Local #255, American Federation of Labor, 1575 Washington Avenue, Miami Beach."

Subsequent to the walkout and on May 25, 1955, a strike vote was held at three places designated by the union and a majority of those participating in the election voted to strike. The union contends and there is no testimony presented in contradiction thereof that those voting constituted a majority of the employees, as of the 17th day of April, 1955, of the plaintiff within the jurisdiction of the union. [fol. 36] These facts, with one exception follow closely those facts outlined in Johnson v. White Swan Laundry, cited in 41 So. (2d) 874 and also in Moore v. City Cleaners and Dyers, 41 So. (2d) 865.

The one exception is the strike vote in the Johnson and Whitehead cases had been held before the strike and which the Supreme Court in the Moore case, supra, said was not necessary if it were to signal or announce a strike. The Court finds that it is immaterial.

If it should be decided otherwise, then the question would arise as to whether or not Section 447.09 F.S.A. paragraph (3), which says:

> "To participate in any strike, walkout, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition."

is constitutional and valid. Its validity has been challenged by the defendant and if justice is to be done the validity of the act should be determined.

This particular paragraph of a similar act in Texas and Kansas has been held unconstitutional.

In International Union of Operating Engineers, Local No. 546, et al, v. Cox, reported in 219 SW (2d), page 787, the Supreme Court of Texas said:

> "Under the plain mandate of the above Federal decisions, we must necessarily hold that the Legislature of this State cannot deprive our citizens of the right of peaceful picketing by narrowly defining a "labor dispute" as a controversy between an employer and not less than a majority of his employees. American Federation of Labor v. Bain, 165 Or. 183, 106 P. 2d 544,

[fol. 37] 130 A.L.R. 1278. To so restrict the term would deny to the minority valuable rights guaranteed by the Constitution, and by reason of the definitions given by the Statute to "secondary strikes" "secondary picketing", and "secondary boycott", those minorities would be subjected to the penalties and liabilities provided in the statute if they sought to publicize their grievances. However, it should not be understood that the states are without authority to enact reasonable regulations for picketing so long as these regulations do not deprive the citizen of his fundamental rights. It cannot be doubted that under the police power the states may impose certain reasonable restrictions even upon peaceful picketing provided they are not destructive of the right to publicize a labor difficulty. They may reasonably regulate the number of pickets, the conduct and demeanor of such persons, the terminology of the placards used in informing the public of the facts of the controversy, and reasonably define the dispute which may justify the activity. That is clearly indicated in the Thornhill case wherein the Supreme Court was careful to point out that the statute there condemned 'leaves room for no exceptions based upon either the number of persons engaged in the proscribed activity, the peaceful character of their demeanor, the nature of their dispute with an employer, or the restrained character and the accurateness of the terminology used in notifying the public of the facts of the dispute." (310 U.S. 88, 60 S.Ct. 743).

The fundamental constitutional right which the Supreme Court of the United States upheld in the above decisions was declared to be secured to "every person". Thus there is no escape from the conclusion that the denial of such right to the members of the minority is no less an unconstitutional abridgment of the right simply because it is saved to the majority. On what theory may the distinction be justified? Does one lose his constitutional guarantee merely because he aligns himself with the minority group? Are rights less sacred to a small group than they are to the multitude? Was not one of the dominant purposes of the Constitu-

> tion to protect minorities from the unlawful and avaricious encroachments of majorities? Surely the framers of our Constitution had no thought that rights guaranteed to the many should be denied to the few.
>
> As reluctant as we are to declare acts of our Legisla- [fol. 38] ture unconstitutional, it becomes our duty to declare invalid that portion of the statute involved which seeks to restrict a "labor dispute" to a controversy between an employer and a majority of his employees."

In Stapleton v. Mitchell reported in 60 Fed. Supple. at page 51, a group of union officials brought an action which had as its object the determination of the validity and constitutionality of a Kansas law similar to our Florida law above quoted.

The case was heard by a three judge Court as provided under the Federal law and the Court held the act unconstitutional. The decision was appealed to the Supreme Court but dismissed on stipulation.

In the opinion rendered in that case the Court said:

> "The right to peaceably strike or to participate in one, to work or refuse to work, and to choose the terms and conditions under which one will work, like the right to make a speech, are fundamental human liberties which the state may not condition or abridge in the absence of grave and immediate danger to the community. But by Section 9(3) (12) (13), the State of Kansas has not only conditioned these rights, but expressly prohibited them and made their exercise a criminal offense. In this setting we think it is the inherent prohibitions of the statute standing alone which impose the unconstitutional restraint, and those against whom the statute is plainly directed should not be required to abide the processes of criminal justice in order to obtain the redress to which they are entitled under the Federal Constitution."

This Court is, therefore, of the opinion that paragraph (3) of Section 447.09 F.S.A. is unconstitutional and invalid.

The Supreme Court of Florida in its opinion filed May 27, 1955, said:

> [fol. 39] "In order for such picketing to be lawful, the Union must establish that the employees have chosen the (Union) as their representative."

The Court finds this has been done and that the union was chosen as the bargaining representative by certain employees prior to the date of picketing.

The Supreme Court further said:

> "The labor Organization must also inform the employer of the object to be accomplished by the picketing * * *."

The Supreme Court of Florida in Hotel & Restaurant Employees and Bartenders Union v. Cothron cited in 59 So. (2d), page 366, the following:

> "It appears that the Chancellor either misconstrued or misapplied the law to the facts as he found them in entering the injunction. The Chancellor stated that "Complainants should have been advised of the reasons for the impending picketing and given an opportunity to remedy the cause as they saw fit." This was no reason to grant an injunction in this case. There is no rule, regulation, or law of this State which requires a notice to the employer of the reasons for an impending strike, as a prerequisite to picketing, and the Courts are without power to supply such rule, regulation or law. The advisability or necessity for such is for legislative determination and not for the courts."

However, as cited above, there is no doubt in the Courts mind that the plaintiff knew that the union desired to negotiate and that the negotiations were to be about wages, hours and working conditions of its employees who were represented by the union.

The Supreme Court of Florida in its opinion of May 27, 1955 further said:

> "and afford to the employer a fair opportunity to engage in negotiations."

[fol. 40] This Court finds that if the Supreme Court recedes from its ruling in the Cothron case, supra, that the plaintiff knew of the union's desire to negotiate long before the pickets were established but by the plaintiff's evasive and stalling tactics did not intend to negotiate and refused to do so.

It is, therefore, Ordered, Adjudged and Decreed that the motion to vacate and dissolve the injunction is granted and the injunctive order heretofore entered in said cause is dissolved, vacated and set aside.

It is further Ordered, Adjudged and Decreed that the objections are overruled on all matters upon which ruling was reserved during the hearings.

Done and Ordered in Chambers at Miami, Dade County, Florida, this 17th day of June, 1955.

/s/ J. Fritz Gordon, Circuit Judge.

[fol. 43]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY

No. 178582

BOCA RATON CLUB, INC., et al., Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255
(A. F. of L.), et al., Defendants.

No. 178667-I

LEEVLANS CORP., Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255
(A. F. of L.), et al., Defendants.

No. 178668-J

HARRY LEVY, et al., d/b/a SHERRY FRONTENAC HOTEL, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), et al., Defendants.

[fol. 44] No. 178704-J

SORRENTO HOTEL CORP., Plaintiff,

v.

HOTEL EMPLOYEES UNIÓN, LOCAL No. 255 (A. F. of L.), et al., Defendants.

No. 178779-F

2500 COLLINS AVENUE CORP., Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), et al., Defendants.

No. 178612-F

MONTE CARLO, INC., Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), et al., Defendants.

Miami, Florida

Transcript of Hearing—Saturday, June 4, 1955

The above-entitled causes came on for hearing before the Hon. Grady L. Crawford, Hon. J. Fritz Gordon and Hon. Robert L. Floyd, Judges of the above-styled Court, [fol. 45] at the Courthouse, Miami, Florida, on Saturday, June 4, 1955, at 10 o'clock a.m., pursuant to notice.

APPEARANCES:

Sibley & Davis, Esqs., Attorneys for plaintiffs. By: Marion E. Sibley, Esq., Darrey A. Davis, Esq., Thomas H. Barkdull, Jr., Esq., and Milton E. Grusmark, Esq., Of counsel.

J. Carrington Gramling, Jr., Esq., Fuller Warren, Esq., and Ben Gettler, Esq., Attorneys for defendants.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Gramling: Your Honors, we have set these causes down for final hearing.

Judge Crawford: Well, it is obviously going to be quite difficult to conduct the hearing with proper decorum with as many people as there are in the courtroom. I will ask all the persons who are not seated to kindly leave the room.

Mr. Gramling: Your Honors, I would like to state that the group of people here are witnesses. They are people that the bill of complaint says we do not represent, and that is why they are here.

Judge Crawford: Mr. Bailiff, will you kindly open the courtroom across the hall. The people may be seated in there until they are called as witnesses.

Mr. Gramling: If your Honors please, this cause was [fol. 46] set down for final hearing. Following the filing, or service, rather, of notice on final hearing, temporary restraining orders were entered in the six causes being heard today. Thereupon we filed, of course, our motion to vacate the temporary restraining order, which actually

would be accomplished anyhow by the entry of the final decree.

Before proceeding to final decree there are two or three motions pending before this honorable court, and with the indulgence of the court I would like to present them at this time in order that they may be ruled upon and the cause proceed towards a final decree. Would the court indulge argument in the matter at this time?

Mr. Sibley: If your Honors please, I think it is proper that the court should now determine why we are here. It is true that we have received notice of final hearing in six of these cases from opposing counsel. We had received the same notice in reference to the same six cases last week with reference to a hearing that was supposed to take place last Saturday. The notice given last week was used as a basis for a telegraphic motion in the Supreme Court of Florida, to ask them to change the opinion because your Honors had set the case for final hearing and undoubtedly would not adhere to what the Supreme Court had indicated was the law in the Sax case.

[fol. 47] I will read the telegram, a telegram similar to this one, which was sent on June 1st to the Supreme Court of Florida, and upon which they have now acted. "Hon. Harris E. Drew, Chief Justice, Supreme Court. Re: Boca Raton Club, Sorrento Hotel, Sherry Frontenac Hotel, San Souci Hotel, Monte Carlo Hotel versus Hotel Employees Union. We do hereby advise this honorable court that the honorable circuit judges to whom the above matters are assigned have set these cases for hearing at 10 a.m., Saturday, June 4, 1955, for final hearing, and plaintiffs' attorneys have been so notified. At that hearing the court will hear and pass upon the matters explicitly set forth by this honorable court in its Sax Enterprises opinion. Since the hearings Saturday are final hearings, it is respectfully represented that these hearings will render mute the question raised at the hearing before the honorable court, as it should have been considered by the court below in the temporary hearings. It is respectfully urged that the honorable Supreme Court should not put itself in the position of mandating temporary orders in matters on which within three days there will eventually be final orders denied or granted. Signed, Fuller Warren."

As your Honors know, the response to this telegram was a hurried meeting by the court in which they directed the clerk to wire your Honors to enter those injunctions, [fol. 48] and I believe such a wire was received by the members of the court. I am so informed.

Now, these cases are not ready for final hearing. Counsel knows it. They set it week before last with this same type of telegram for the Sax case. They were going to meet last Saturday and have a final hearing. Their answer to that was the Sax opinion. This week they came to your Honors for the purpose of propagandizing the Supreme Court of Florida, and sent this telegram. In the face of it the Supreme Court hurriedly meant to tell your Honors to enter the temporary injunction. These cases are not at issue. Answers have been filed and a counter-claim has been filed—a motion to the Supreme Court—the counter-claim is not pending.

These cases will be issued 20 days after that counter-claim is disposed of. We are not prepared to go into a final hearing. We have 60 days in which to take our testimony. Not only that, but in order for these cases to be set before the court for final hearing, it is essential we be given notice setting it before the court, giving us an opportunity to be present at the time the court determines when it will hear the cases. No such notice was given. No such order set in the case to try before the court has been rendered, as far as I know, by any of the judges sitting here today.

These cases are not at issue and we object to a final hearing. Secondly, I am not prepared for final hearing. [fol. 49] Thirdly, we object upon the ground we have received no notice of an application of an order setting it before the court for trial. Fourth, we know on no order, nor have we received any order, setting the case for trial before the court.

Judge Crawford: All right. Mr. Gramling, do you have something to say?

(Thereupon counsel argued to the Court.)

Judge Crawford: The Court will retire for about five minutes. The Court is not in recess.

(Thereupon the Court retired for short period of time, after which the following proceedings were had:)

Judge Crawford: It is the ruling of each of the judges in the six cases now before the court, that the matter today will not be considered as a final hearing. We will proceed with the hearing on the motion to vacate the temporary restraining order filed by the defendants, and the motion to dismiss filed by the plaintiffs. After we have heard those motions we will hear any other motions that the parties wish to be heard at that point.

Mr. Sibley: What were the motions your Honors will hear at this time? I did not understand.

Judge Crawford: The motion to vacate the temporary restraining order, which motion has been filed by the de-
[fol. 50] fendant. We would then like to hear the motion to dismiss, which motion was filed by the plaintiff.

Mr. Sibley: I do not think that has been set for hearing. I am not prepared.

Judge Crawford: I believe the notice sets all pending motions for hearing today.

Mr. Sibley: Let me ask if your Honors will invoke the rule before we start taking testimony on the motion to revoke the motion.

Mr. Gramling: First of all, I believe they are the defendants, Local 255. If there are any people in the courtroom that are not members of 255 I would be glad to have them retire.

Judge Crawford: I am only concerned with the witnesses you are going to call.

Mr. Gramling: We are only going to call members of 255, and they are the defendants in the cause.

Judge Crawford: Do you have a list of the members?

Mr. Gramling: Yes, sir.

Mr. Sibley: Your Honors, members are not entitled, more than stockholders of a corporation.

Judge Crawford: We will allow a representative of each of the parties to be present with counsel, but the witnesses you may expect to call must be excluded from the
[fol. 51] courtroom under the rule which has now been invoked by counsel for the plaintiff.

Mr. Gramling: You mean members of 255, who are the real defendants in the case, are to be excluded?

Judge Crawford: No, sir.

Mr. Gramling: Well, I did not understand you.

Judge Crawford: The defendant union, 255, is similar in this case to a corporation, and may have a proper representative present at counsel table at the hearing. Those witnesses who you expect to call are excluded under the rule. All other persons, whether they are members or not, are welcome in the courtroom as general public.

Mr. Gramling: All right. All members of Local 255, would you quietly retire from the room?

Judge Crawford: Before you do that, just a moment. Do you not have a list of the witnesses you expect to call?

Mr. Gramling: Yes indeed, sir, and they are in the six cases put together. They represent approximately in toto everything you see here this morning. We expect to put into evidence the testimony of all of the employees of each respective hotel in group form.

Judge Crawford: Then you expect to present a great number of witnesses?

Mr. Gramling: Yes, sir; and it has been expedited in previous hearings by having, let us say, all the employees of the Sorrento Hotel step forward and so testify en mass, [fol. 52] and I make a proffer of what they would say, and they raise their hands and swear that is actually so. That is all I am asking to do.

However, here is a list of the people who, according to the complaint, we do not represent, and they are here, and they would be the ones who are going to testify.

Judge Crawford: Just keep it down there.

Mr. Gramling: I mean, you asked me, do I have a list.

Judge Crawford: I assumed you had a list of 15 or 16 witnesses you wished to testify.

Mr. Gramling: Sir, we are fulfilling the requirements of the Supreme Court, which says we must show we do represent the people we claim to represent. We have got them here. We did not want to limit ourselves to just 15 or 16. There are 205 in the Algiers, and so on down the line it goes, and we have them here to testify in case there is any

objection. We have got the best evidence, the members themselves.

Judge Crawford: Since we have previously cleared the courtroom of, I would say, two-thirds of the people in here, do you still wish to invoke the rule under the circumstances outlined by Mr. Gramling?

Mr. Sibley: Yes, your Honor, I am willing to do this. Now, before Judge Giblin, before Judge Wiseheart, and I believe before Judge Carroll—I am not sure about Judge [fol. 53] Cannon—we have let them name off the people who are going to testify, and state what they are going to testify, and for the purposes of this hearing, under the Supreme Court decision, have conceded what they were going to say without killing the court's time, and that was in the cases in which Judge Giblin entered the injunction, the case in which Judge Wiseheart, and the case in which Judge Carroll—we have conceded that as totally immaterial under the Supreme Court opinion, and apparently so held by them, because the injunction was granted. I am perfectly willing to aid him as best I can and save him the time and trouble, but I cannot concede the amounts he has there. Bring them up when the time comes, and let me take a look at them, and get their names in the record, and let him state what they would be willing to swear to, and we will go along that far.

Judge Crawford: Going back to this matter of the rule, it would seem to me that under the circumstances just outlined by counsel, and stated by yourself, that you are willing to allow these members who are present to remain in the courtroom; is that correct?

Mr. Sibley: Well, I do not know what testimony he is going to proffer. It might not be the same, and then they might have to call them. I do not know what he is going to proffer.

[fol. 54] Mr. Gramling: I will state what the proffer will be. It will be proffered by the number of people that we have in these respective hotels that they are members of Local 255; that they have designated Local 255 as their bargaining agent for the purposes of representing them in negotiations with their employer in labor-management relations; that they were not coerced, intimidated, threatened

and the recipients of violence in causing them to refrain from going to work, as alleged by the bill of complaint, but on the contrary, they voluntarily respected the picket line when they saw it, being members of Local 255.

Mr. Sibley: Let me ask counsel, do those cards represent the designation of their bargaining agent?

Mr. Gramling: Yes, sir.

Mr. Sibley: I believe the cards would be the best evidence.

Mr. Gramling: Yes. On top of that we have verbal designations as members. Do you want to see them? We will not offer them in evidence at this time.

Mr. Sibley: They may be the best evidence. Maybe we can shorten it. Let me take a look at them. Let me suggest to counsel, rather than have all the people testify, I will not object to him putting all these cards in; the names of the people signed to them indicating their bargaining [fol. 55] agent, and that will save us a lot of time, and it will be the best evidence anyway.

Judge Floyd: Does it make any difference as to that?

Mr. Sibley: It will not make any difference to this hearing, as we conceded it at the Supreme Court hearing anyway. I am perfectly willing to let him put it in.

Mr. Gramling: Sir, we feel that the best evidence, of course, is the testimony of the people themselves, and we have had a grave misfortune befall us in the Supreme Court by learning that the justices there thought that you gentlemen and we should have done something we did not do.

Now, I want to be sure this record is such that something new cannot be dreamed up in Tallahassee and say, "Well, you should have done it another way." We would like to do it both ways—all ways. We want to get it beyond any doubt that we represent these people, and these people want us to represent them.

Judge Floyd: Mr. Sibley said he has stipulated to the testimony represented by those cards; that they would testify to those facts. Is that not the stipulation?

Mr. Gramling: All right.

Judge Gordon: In order to have it properly in, can we make a list of everyone on those cards.

[fol. 56] Mr. Sibley: That is the best evidence.

Mr. Gramling: I will tell you why we want the cards instead of the direct testimony. Let us lay it out on the table. Some of these cards are signed by these people to Miami Hotel Trades Council. Some are signed to 255. They are one and the same organization as far as representation is concerned. There are some who are dues paying members of Local 133, who are working in houses under the jurisdiction of 255, who are represented and designated 255 as their bargaining agent, and you gentlemen can take judicial knowledge that Local 255 is the child of 133, but exercising jurisdiction only as to the hotels.

So, if we insist upon nothing appearing in the record other than these cards, the next thing you know we are going to have such an irregularity as the fact that one is Miami Hotels Trade Council, and another is 255, and somebody with a card from 255 means we do not represent the people.

We can settle that once and for all by having the people up here and say, "Yes siree, 255 did represent me. It does now, and I desire it to continue representing me." Unless you will stipulate that would be their testimony.

Mr. Sibley: I will stipulate they have signed cards, as shown there, or some of them have. It is always subject to my inspection later at final hearing, to determine whether [fol. 57] there are any forgeries, but I am perfectly willing for the cards to go in evidence, indicating who these people who signed these cards have designated as their bargaining agent.

If it is Miami Hotel Trades Council, it is the Miami Hotel Trades Council. If it is Local 255, it is Local 255, and he brought them in here and cannot change what is on them, I do not think.

Judge Crawford: Gentlemen, I think we are away a little bit. The matter under discussion is whether or not the rule should be invoked by counsel. Do you insist that the rule be invoked?

Mr. Sibley: Yes, sir.

Judge Crawford: Is it your wish to present the testimony of the individual witnesses?

Mr. Gramling: Yes, sir.

Judge Crawford: Ladies and gentlemen, we have a rule of court which, when invoked by counsel for either side, requires that witnesses who expect to testify in a case must be excluded from the hearing room until called to give their testimony. If any witnesses are present in the courtroom it is the duty of the court at this time to ask that you retire until called to give your testimony. While you are outside, awaiting the call of counsel, you are cautioned not to discuss your testimony among yourselves, or with any other [fol. 58] persons, except counsel for each side in the case who may wish to question you before your appearance.

Mr. Gramling: And if your Honor please, would you add in your instructions to the witnesses, they hold themselves in readiness because we intend to proceed immediately into the procedure of calling them one hotel by another.

Judge Crawford: I am going to ask the bailiff to open up the two small courtrooms on the right and left side of the hall as you go out, and I will ask you remain seated there until you are called by your counsel to testify. We will take a three minute recess.

(Thereupon a short recess was taken, after which the following proceedings were had:)

Mr. Gettler: Let it be noted that Mr. Herman, who is a witness, will remain as the one representative of Local 255.

Judge Crawford: All right.

Mr. Sibley: If your Honors please, if I may make a suggestion in the record which I believe to be appropriate. Under at least the unwritten procedures in this circuit—I do it with some hesitation, but I feel that it is appropriate under the circumstances. May I suggest that the orders which are sought to be vacated at the present time are orders signed in the causes by Judges Crawford and Floyd, [fol. 59] and that under the usual procedure in this circuit, where a temporary order in a cause is signed by an alternate or by an emergency judge, the judge to whom the cause is ultimately assigned does not hear any motion to vacate, set aside, change or modify that order rendered by the alternate judge or emergency judge. Under the circumstances I suggest that the appropriate court to hear this——

Judge Crawford: Just a moment. The rule of court has been invoked which requires all witnesses to remain outside. If you expect to testify you must remain outside.

Mr. Sibley: They may testify, but they represent different hotels.

Judge Crawford: Unless you are members to the suit. Proceed.

Mr. Sibley: That is the first suggestion that I make in the record. The second suggestion that I humbly make in the record is that the joint hearing out of which the injunctive orders arose was presided over by Judge Carroll, in conjunction with Judges Crawford and Floyd; that that record was made with those three judges presiding. Temporary injunctions have been issued in all of the cases in which those three judges presided, and that if counsel wish to call together again, in the same fashion, judges to continue that record which this is in effect, or which seek to [fol. 60] vacate injunctive orders rendered on that record, it is appropriate—I say not only appropriate, it is imperative that the same three judges preside again, and one should not either purposely or otherwise be excluded from the continuation of that hearing or a motion to vacate what was entered on the record when those three judges presided.

Mr. Gramling: If your Honors please, it should equally go into the record——

Judge Crawford: I think that the record clearly shows that though the cases were heard together, they were not consolidated, but the hearing was held as a matter of convenience to counsel. Each judge retained jurisdiction of the case assigned to him, and each decision was made independently. The matter of whether or not the decision on the motion to vacate the temporary restraining order in the two cases assigned by Judge Gordon is decided by Judge Gordon, or Judge Floyd, will be taken up at a subsequent time. Because two of the cases are in Judge Gordon's division, and because he will have to make final determination, he will continue to sit at this hearing.

Opening Statement on Behalf of Defendants

Mr. Gettler: At this time we would like to make an opening statement, and in fact, go a little beyond what the or-

dinary opening statement normally embraces. In the opening statement we set forth to your Honors exactly what we [fol. 61] intend to prove. Since, however, this matter has been to the Supreme Court; there has been an opinion rendered. In addition to telling your Honors what we are going to prove, we want to point out under what particular parts of the Supreme Court opinion we are going to prove it; exactly why we are putting in each bit of evidence.

Judge Crawford: Just a moment. We will be pleased to hear a short opening statement. Please do not argue the case at this time.

Mr. Gettler: I do not intend to argue the case. I simply want to point out what we are going to put in. As your Honors will recall, these cases were heard on plaintiffs' evidence for temporary restraining order on the 28th, 29th and 30th days of April. At that time your Honors had before you plaintiffs' evidence, which basically went to two points.

First, it went to the allegations as to conduct of the picketing in regard to violence. Secondly, plaintiffs put on evidence in regard to the lawfulness of the picketing. At the close of those hearings your Honors ruled that the injunction would not be granted based on the conduct of the picketing. That is, the plaintiffs had not shown enough in the way of violence to justify a temporary restraining order.

Now, as to the second point on which plaintiffs introduced evidence, that is, the lawfulness of the picketing, [fol. 62] your Honors ruled that although you felt that was an important point in the case, that answers had not been filed, and that therefore you would not pass on the question one way or another on the temporary restraining order.

Then, when it went up to the Florida Supreme Court, your Honors were sustained on your original holding that as to the conduct of the picketing, there was no basis for an injunction. However, as to the second point, as to the question of the lawfulness of the picketing, the Supreme Court of Florida held that your Honors erred in that you should have actually heard evidence, or gone ahead and heard evidence and considered and actually determined the question as to the lawfulness of the picketing. Basically, that is what we will be before your Honors on this morning.

Now, the Supreme Court of Florida has specifically set forth what we must show to your Honors at this time. They stated, and I quote: "Without doubt a labor organization has the right to engage in peaceful picketing on the employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union as the representative of such employer's employees. In order for such picketing to be lawful"—I am reading this because the court actually went further and actually specifically set forth what your Honors should hear, and what your [fol. 63] Honors should determine. They said: "In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative."

Point No. 1, we must show to your Honors that the employees have chosen Local 255 as their representative. To do that we are going to call each one of these people who were in the courtroom who worked at plaintiff's establishment to show each one of those individuals have chosen Local 255 as their representative.

Now, the Supreme Court goes on to point No. 2. "The labor organization must also inform the employer of the object to be accomplished by the picketing." And No. 3: "Afford to the employer a fair opportunity to engage in negotiations."

Now, of course, we are not going to argue any of those points at this moment because we must show your Honors —we are going to show your Honors exactly we meet all three points. We are going to show by these witnesses that Local 255 represents the employees. We are going to show what was to be accomplished; as to whether the employer knew it. We are going to show, for a period of many weeks this union tried to contact the employers, and did contact the various employers in many cases, and advised them of it. We will show they sent letters; that telegrams were sent; announcements were made over the radio; television [fol. 64] advertisements; announcements made in newspapers; leaflets passed out, and in every conceivable way, by every means of communication, it was clearly and forcefully brought to the attention of the employers what Local 255 and its members want.

They wanted these employers to recognize Local 255 as their collective bargaining representative, and negotiate with the union on their behalf. We will show that the plaintiffs come into court with unclean hands. They have continuously and adamantly refused in any way to deal with Local 255. They have done that in spite of the entreaties of the local; in spite of the entreaties of the individual employees, and in spite of the entreaties of public officials.

We will show that on the other hand, Local 255 has always held itself ready to negotiate and deal with the employer. We will show that these employers had knowledge of the demands of Local 255 ahead of time, before the picketing started and various of these hotels called the employees together; that management said to them, "We know you are going to start picketing." The day after they knew exactly, they told the employees if they walked out they would not get a job here any more. We are going to show in every way they had notice of it. They showed they had notice. They knew exactly what was going to happen.

We are certain that after your Honors have heard the [fol. 65] evidence you will agree we come within the requirements set forth by the Supreme Court of Florida in this case, and you will restore to these defendants their right to advertise to the world what their dispute is.

I would also like to make one other point, and that is this. Before the Supreme Court, on oral argument, we specifically asked the Supreme Court what should we do now that your Honors have ruled that plaintiffs alone have shown their evidence, and that a temporary order should issue. And we were told to come right back here and either try to set it down for final hearing, or for motion to vacate. Then we could put on our evidence for the first time and we would be heard, and that then your Honors, on the basis of that evidence, could actually make a determination as to these specific points, but they stated, in the absence of having put on evidence, and since the only thing before your Honors was plaintiff's evidence, they had to take the action they did. We are at this time going ahead to put on our evidence.

Judge Crawford: Do you wish to make a statement now, or at the conclusion?

Mr. Sibley: I should like to make a statement at the conclusion, after whatever evidence he may have to offer.

Judge Crawford: Call your first witness.

[fol. 66] Thereupon—ROBERT DAVIS was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and address, please?

A. Robert Davis, 1421 Southwest 4th Street, Miami.

Q. Where was your last place of employment, Mr. Davis?

A. Algiers Hotel.

Q. And in what capacity?

A. Linen man.

Q. How long had you worked at the Algiers?

A. Well, I opened the Algiers, and I left and went to the Nautilus, and came back to the Algiers.

Q. When was that that you opened the Algiers, as you put it?

A. Three years ago.

Q. That yould be in 1952?

A. That's right, when it was just built.

Q. Mr. Davis, are you a member of the defendant local, Union 255?

A. Yes, sir; charter member.

[fol. 67] Q. When did you join Local 255?

A. Well, when they started organizing, September, 1953, and I have been a charter member of Local 255 since it was organized.

Q. I believe you have a membership book—is that what this is?

A. That's it.

Mr. Gettler: I will ask this be marked as a defendants' exhibit.

Judge Crawford: We are working without a clerk today. Will you show it to counsel, please?

Mr. Gettler: Yes.
Mr. Sibley: No objection.
Judge Crawford: It will be marked as Defendants' Exhibit A.
Mr. Sibley: This is in the Algiers case, your Honor?
Judge Crawford: Yes.

(The document referred to was thereupon marked, "Defendants' Exhibit A.")

Mr. Sibley: All the testimony will be in the Algiers case until you announce otherwise?
Mr. Gettler: All the testimony with this witness will be in the Algiers. In the future, to make it simpler, as I call the witness I will announce what specific hotel the evidence is for.
[fol. 68] Mr. Sibley: All right.

By Mr. Gettler:

Q. Mr. Davis, when you joined Local 255 did you designate that local union to represent you in bargaining with your employer in labor relations matters?
A. Yes, sir.
Q. Did you do that the same time you joined the local union?
A. Yes, sir. It is on my application.
Q. Did you have any complaints against your employer that you wished your local union to negotiate for you?
A. Yes, sir.
Q. What were these complaints?
A. Well, we worked too many hours, and not enough pay.
Q. Mr. Davis, on May 25, 1955, did you participate in a secret ballot election to determine whether you desired to strike against the Algiers?
A. Yes, sir.

Mr. Sibley: I move to strike it upon the ground it is immaterial and irrelevant.
Mr. Gettler: Your Honor, the basis——
Judge Crawford: Just a moment. Would you tell us why, Mr. Sibley?

[fol. 69] Mr. Sibley: Because they put a picket line up on April 30th, I think the record shows, and after his position was filled he no longer has the right to vote on the strike. It is impossible for him to strike since he quit. This occurred May 25th, he says. It is totally immaterial.

(Thereupon counsel argued to the Court.)

Judge Crawford: We will allow the witness to answer the question subject to the Court's later ruling on the objection made by plaintiff's counsel.

By Mr. Gettler:

Q. Did you vote to strike?
A. Yes.

Mr. Sibley: Same objection. If I may have one in the record so I will not interrupt.
Judge Crawford: Same ruling.

By Mr. Gettler:

Q. Mr. Davis, did you walk out of the Algiers on April 21, 1955?
A. Yes, sir; after we had a shop meeting and voted to go out.
Q. And have you participated in the picketing?
A. Yes, sir.
Q. Has it been peaceful?
A. Very peaceful.

[fol. 70] Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. Mr. Davis, you are a charter member of 255; is that correct?
A. That is correct.
Q. Have you ever been convicted of a felony?
A. No, sir.
Q. Is Bob Davis your right name?
A. Yes, sir.

Q. You say you had a shop meeting at the Algiers?
A. No, sir; 1575 Washington Avenue.
Q. That is the union hall?
A. That's right.
Q. What time of day did you have the shop meeting?
A. We had it at 4 o'clock, the day before we went out.
Q. How many people were present?
A. About 125.
Q. 125 were present at the time?
A. All members of the union.
Q. Can you name who was present?
A. I can name about 25 offhand.
Q. Name them.
[fol. 71] A. Ethel Gottfried, Hazel Robert, Mimi Osa, Susy Rivera, Carl Halstet—I can't just remember. I know most of their first names. I don't know their last names.
Q. Go ahead and name their first names.
A. Delores Cowart. Maulder is one girl's first name. I don't know her last name. She is French. Ciel; Margaret; Carl, another houseman; Terry, the porter; Jack Farman, a porter, and that's all the names I can remember.
Q. What did you do at that meeting?
A. We took a vote of a strike to walk out. We had a strike to walk out.
Q. Who made the motion to strike; did you?
A. I did.
Q. Who seconded that motion?
A. I don't remember.
Q. Did all of them say they wanted to strike?
A. That's right.
Q. How did you ask for the vote; by raising their hands?
A. No; secret ballot.
Q. Who controlled the election?
A. Who controlled the election?
Q. Yes.
A. It was just three of the organizers there, myself, [fol. 72] and a couple of other boys from other hotels.
Q. Who were the organizers present?
A. Mr. Michel, Mr. Herman, and Mr. Smith.
Q. Did you know Mr. Herman has testified in no instance was a secret ballot taken—did you know that?

A. No, sir; I did not.

Q. Did you know your answer said there was no secret ballot taken at the Algiers together with Local 255?

Mr. Gramling: I object to that. My answer specifically says that no action was taken as contemplated or coming within 447.09 (3 and 4).

Mr. Warren: We respectfully object to counsel haranguing at the witness as it intimidates him.

Judge Crawford: I think the court can take notice that this witness does not know what is contained in the answer.

(Thereupon counsel argued to the Court.)

By Mr. Sibley:

Q. Who conducted that secret ballot?

A. Myself and Mr. Michel.

Q. And what was on the ballot?

A. Well, nothing was on the ballot. It was a piece of paper and we marked yes or no—we wanted to go out.

Q. How many voted yes and how many no?

[fol. 73] A. 125 yes.

Q. All of them voted yes?

A. Yes.

Q. Who counted the ballots?

A. I counted some and Mr. Michel counted the rest.

Q. What were they put in when they voted?

A. We didn't have to put them in anything. It was just a vote for a walkout, not a vote to strike.

Q. You mean if a man signed the piece of paper, then you went around and——

A. He put it in a box.

Q. What kind of box?

A. Just a little cardboard box.

Q. And Mr. Michel helped you count the ballots?

A. That's right.

Q. What day was that now?

A. On the 25th of April.

Q. What time?

A. At 4 o'clock in the afternoon, right after the girls and boys got out of work.

Q. That was after one shift went off and another shift came on?

A. That's right.

Q. That was the vote of the shift that had just gone on?

[fol. 74] A. That's right.

Q. Did you quit your job before the picket line was thrown up?

A. No, sir; I came to work at 6 o'clock in the morning. The picket line was there, and I didn't go in.

Q. You knew it was going to be there, did you not?

A. Yes, sir; I did.

Mr. Sibley: That is all.

Judge Crawford: May we have counsels' consent for the witness to remain in the courtroom now, if he desires?

Mr. Sibley: No, sir; I do not wish this particular witness.

Mr. Gettler: Your Honor, we do not intend to recall him.

Judge Crawford: But counsel has the right to call him if he wishes.

Judge Floyd: You are not to discuss the case with anyone.

Thereupon—Edward Bareau was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

[fol. 75] Direct examination.

By Mr. Gettler:

Q. Will you state your name and address, please?

A. Edward Bareau, 270 Northwest 59th Avenue.

Q. Where was your last place of employment, Mr. Bareau?

A. Sorrento Hotel.

Q. In what capacity?

A. Waiter, sir.

Q. When did you start working there?

A. In January, sir.

Q. Of 1955?

A. Yes, sir.

Q. Are you a member of Local 255?

A. I am a member of Local 133, sir.

Q. Did you ever designate Local 255 as your collective bargaining agent for purposes of dealing with your employer?

A. Yes, sir.

Q. Now, there was a walkout at your hotel, was there not, on April 19th; is that correct?

A. Yes, sir.

Q. And at that time did you walk out?

A. Yes, sir.

[fol. 76] Q. And have you participated in the picketing?

A. Yes, sir.

Q. Has it been peaceful?

A. Yes, sir.

Q. On May 25, 1955, did you participate in a secret ballot strike election?

Mr. Sibley: Same objection, your Honor.

The Witness: Yes, sir.

Q. Did you vote in favor or against the strike?

A. In favor, sir.

Q. Did you voluntarily leave your employment on April 19th to walk out?

A. Yes, sir.

Q. Did anybody intimidate or coerce you, or threaten you?

A. No, sir.

Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. How long have you been a member of 133?

A. For three months, sir.

Q. You remember what your application said about designating 133 as your bargaining agent?

A. Yes, sir; I designate them, my union, to go for bar-

[fol. 77] gaining agent.

Q. Your union, 133, to be your bargaining agent?
A. No; 255.
Q. How did you make 255 your bargaining agent? Did you sign anything?
A. Yes; I did sign.
Q. What did you sign?
A. I signed a card, sir.
Q. Who did you give it to?
A. At the Sorrento Hotel.
Q. You gave it to who?
A. One of the union members.
Q. Who was it that you gave it to?
A. Eddy—he is a waiter there. He gave me a card.

Mr. Sibley: Has counsel got the witness's card? I move to strike his testimony on the ground it is not the best, unless you produce the card.

Mr. Warren: His own statement is better, and the card, that is secondary to his own statement.

Judge Crawford: In the Algiers and Monte Carlo cases, the motion is denied.

Judge Floyd: In the Sorrento case I will grant the motion.

Mr. Sibley: Let me have it. Do you want to produce [fol. 78] the card as the best evidence? This is not given in the Algiers case.

Mr. Gettler: This is in the Sorrento.

Judge Crawford: I understand that but there was a conflict among the judges, and I properly should have let Judge Floyd rule since it is his case.

Mr. Sibley: I do not understand your Honor's ruling in a case in which your Honor is not judge.

Judge Crawford: You are correct. I probably should not have ruled at all.

Mr. Sibley: All right. I understand.

Judge Crawford: For the record it means nothing since it is Judge Floyd's case, and his decision.

Judge Floyd: I have sustained the motion.

Mr. Gramling: Let us give him another one to sign. We can save some time.

Mr. Sibley: He said he designated it in writing. The writing is the best evidence.

Mr. Gettler: Mr. Edward R. Bareau?
The Witness: Yes, sir.
Mr. Gettler: Here it is.

By Mr. Sibley:

Q. You know when you signed this card?
A. Yes, sir.
[fol. 79] Q. What date?

Mr. Warren: Your Honor, we submit that the date on the card is the best evidence.
Mr. Gettler: I do not think it is stated.
Mr. Sibley: We submit it is too, if it is there. That is the basis of our objection.
Mr. Warren: We take the position that the absence of the date would be a presumption if it is signed on the proper date.
Judge Floyd: Proper is sort of a relative term.
Mr. Sibley: For whom? For us or for you?
The Witness: This card was signed the date of January 4th.

By Mr. Sibley:

Q. That was on May 27th.
A. This card, but I signed another card at the Sorrento Hotel before April 19th.
Q. This card you signed the day you went out and had the general vote, which was May 27th?
A. Yes, sir.

Mr. Sibley: We have no objection to putting it in evidence. As a matter of fact, we offer it in evidence when our time comes. I cannot offer it in evidence now.
[fol. 80] Judge Floyd: We will mark it for identification.

Offer in Evidence

Mr. Gettler: As a matter of fact, your Honor, I will offer it.
Judge Floyd: All right. Defendants' Exhibit A in the Sorrento case.
Mr. Gettler: That is right.

(The document referred to was thereupon marked, "Defendants' Exhibit A-Sorrento.")

Mr. Sibley: No further questions.

Judge Crawford: Let the record show that the first exhibit was marked A-Algiers, while this exhibit is marked, A-Sorrento.

(The document referred to was thereupon marked, "Defendants' Exhibit A-Algiers.")

Judge Floyd: Any questions of the witness?

Mr. Sibley: No further, your Honor.

Mr. Gettler: I have nothing further.

Thereupon—ALFRED PISSANI was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and address, please?

[fol. 81] A. Alfred Pissani, 73rd Street and Ocean Terrace.

Q. Where was your last place of employment?

A. Hotel Sorrento.

Q. In what capacity?

A. Waiter.

Q. How long had you been employed in the Sorrento?

A. About three and a half months.

Q. Are you a member of Local 255?

A. Yes, sir.

Q. When did you become a member of Local 255?

A. A couple of months ago—two and a half months ago.

Q. Would that be during the month of March?

A. Yes, sir.

Q. And did you designate Local 255 as your bargaining agent to deal with your employer on all labor-management matters?

A. Yes, sir.

Q. Did you have any complaint in your employment?
A. Several.
Q. What were those complaints?
A. Abuses.
Q. What abuses are you speaking of?
A. Abuses; long hours.
[fol. 82] Q. Can you explain to the court what you mean by abuses?
A. Well, I was a waiter. I done other things but wait on tables.
Q. You did not want to do other things; is that it?
A. That's right.
Q. Mr. Pissani, on April 19th did you walk out of your place of employment as a part of a protest walkout?
A. Yes, sir.
Q. And did anyone threaten you or intimidate you or force you to walk out?
A. No, sir.
Q. Have you been walking on the picket line?
A. Yes, sir.
Q. Has it been peaceful?
A. Yes, sir.
Q. Mr. Pissani, on May 25, 1955, did you participate in a secret ballot strike election?

Mr. Sibley: Same objection. May I ask that it be marked in each of these cases?
Judge Crawford: As to those questions?
Mr. Sibley: Yes, sir.
The Witness: Yes, sir.

Q. Did you vote to strike or not to strike?
[fol. 83] A. To strike.

Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. Were you a member of Local 133?
A. No, sir.

Q. Never have been a member of Local 133?
A. No, sir.
Q. Did you sign a card appointing a bargaining agent?
A. Yes, sir.

Mr. Sibley: We move to strike the witness's testimony upon the ground that the writing is the best evidence, and ask you to produce it.

Judge Floyd: The motion will be granted unless the card is produced.

Mr. Gettler: In order to make sure we have the right man, how do you spell your name?

The Witness: Pissani.

By Mr. Sibley:

Q. What date did you strike, sir?
A. The day I struck, April 18th or 19th.
Q. Is this the card you refer to?

Mr. Warren: For the record, he said he walked out.

[fol. 84] Mr. Sibley: All right, walk out. I am sorry. I will modify it for you, Governor.

The Witness: The 19th.

Q. That is your card?
A. That's right.

Mr. Sibley: We ask permission to be permitted to tender it in evidence, the card which has been identified by the witness, unless you want to offer it in evidence.

Mr. Gramling: We have no objection to letting it go in as our Exhibit B-Sorrento.

Mr. Sibley: I call your Honor's attention to when it was signed and who is appointed as bargaining agent.

Judge Floyd: It is marked Defendant's Exhibit B-Sorrento.

(The document referred to was thereupon marked, "Defendant's Exhibit B-Sorrento".)

Redirect examination.

By Mr. Gettler:

Q. When you joined Local Union 255 sometime in March of 1955, did you orally or any other way designate Local 255 as your bargaining agent?

[fol. 85] Mr. Sibley: I object to that. The writing signed by the witness is the best evidence.

(Thereupon counsel argued to the Court.)

Judge Floyd: Objection overruled.

Q. I asked you whether when you joined Local 255 in March of 1955, you orally—that means by just talking, not writing—designated Local 255 to bargain for you with your employer?

A. Yes, sir.

Mr. Gettler: That is all.

Recross examination.

By Mr. Sibley:

Q. I understood you to say at the time you made the designation you signed a card, sir.

A. I done both.

Q. At the same time?

A. I don't remember if it was the same time—the same hour or the same day. It was around about that time.

Q. Have you got your card, showing you are a member of the union?

A. I think I have.

Q. Let me see it, will you, please?

A. Here it is.

Mr. Sibley: We tender it in evidence, or ask it be marked so we later can put it in evidence, the card from the union, [fol. 86] indicating the day he was admitted.

Mr. Gettler: We, of course, are not offering it. We believe it has no relevancy. It shows initiation date, not application for membership date.

Judge Floyd: It will be marked for identification as Plaintiff's Exhibit 1-Sorrento.

(The document referred to was thereupon marked, "Plaintiff's Exhibit 1-Sorrento".)

Mr. Sibley: I have a number in the Sorrento already.

Judge Floyd: Then I will mark it on rebuttal as 1-R.

(The document referred to was thereupon marked, "Plaintiff's Exhibit 1-R Sorrento.")

Mr. Gramling: Can it be noted in connection with that passbook, that it does not reveal when he made application for membership, nor what that application provided?

Judge Floyd: Sir.

Mr. Gramling: I say, will it please be noted——

Mr. Sibley: I have not offered it in evidence yet. I cannot.

Judge Floyd: It is not offered in evidence. We are only marking it for identification.

[fol. 87] Mr. Sibley: No further questions.

By Judge Floyd:

Q. Mr. Pissani, when you made the oral designation of Local 255 as your bargaining agent, who did you make that to?

A. One of the representatives of the local.

Q. Who was that?

A. I am bad with names. It was one of the business agents.

Q. Of Local 255?

A. Yes, sir.

Q. Well, now, when you made that to him, that was about a month you say prior to the time you signed that card?

A. While I was at work.

Q. Sir.

A. Yes, sir.

Q. When you signed that card did you mean to retract that oral designation and have that organization represent you as bargaining agent?

A. I thought perhaps later on somebody wouldn't believe me. I thought I better sign one of them.

Q. This is for the Miami Hotel Trades Council. I want

to know whether or not you meant to retract the designation you made orally of Local 255, when you signed the card?

[fol. 88] A. I didn't mean to retract the statement. I thought it was the proper thing to do at the time.

Q. What time did you walk out of the Sorrento Hotel?

A. I think it was the 19th.

Q. I know, the 19th, but what time of the day?

A. About 6 or 7.

Q. In the evening?

A. In the morning.

Q. When did you sign the designation of Miami Hotel Trades Council as your bargaining agent?

A. I think it was the same day.

Q. Was it prior to 6 or 7 in the morning, or after 6 or 7 in the morning?

A. I don't remember.

Q. Where did you come from when you went to the Sorrento the morning of the walkout—your home or someplace else?

A. I went home to inform my wife.

Q. How did you get to the Sorrento that day?

A. By bus.

Q. Did you come right from home by bus to the Sorrento?

A. Yes.

[fol. 89] Q. Did you sleep there that night at your home?

A. After the walkout?

Q. No, sir; before the walkout.

A. Yes, your Honor.

Judge Floyd: All right.

Mr. Gramling: If your Honor please, I believe I can make it simpler. We will show that the two organizations are in effect alter egos, and also that those who signed cards with 133, that that local actually is a sister local with 255. Actually they have concerted activities. It does not matter which one of the cards they sign. They might pick up the nearest one and have them sign it, and the result would be the same. I think we can show you that, your Honor.

Judge Floyd: Yes.

Redirect examination.

By Mr. Gettler:

Q. In view of these questions, Mr. Pissani, did you sign an application for membership in Local 255 when you first joined it?

A. Yes, sir.

Q. Is this, except for the inked portion, an exact copy of your application for membership?

[fol. 90] A. Yes, sir.

Colloquy Between Court and Counsel

Mr. Sibley: Is that his application?

Mr. Gettler: No; it is not. This is a copy.

Mr. Sibley: I move to strike the question and answer upon the ground that whatever he signed with Local 255 is the best evidence of what he signed.

Judge Floyd: Motion granted.

Mr. Gettler: We intend to send for that, your Honor, and we will recall the witness later for that purpose.

Judge Floyd: This witness is still under the rule. Do not discuss the case with anyone. You may be excused at this time, but you are subject to recall. Wait outside, sir.

Mr. Gettler: I will call Walter Delaney from the Sorrento.

Judge Floyd: When were you going to get the testimony en mass (sic)?

Mr. Gettler: I am ready at any time to bring the people in and stipulate if each one of them were brought on the stand on direct and cross, they would testify as the previous witness would testify.

Mr. Sibley: I will stipulate that 50 per cent will testify as Mr. Bareau, and 50 per cent as Mr. Pissani.

[fol. 91] Mr. Gettler: Actually your Honor, if that settles it, we have no objection. As I understand, we only have to show that some of them designated 255 as the bargaining agent. If you want to agree that 50 per cent would testify as Mr. Pissani, and 50 per cent as Mr. Bareau, it would shorten the proceeding.

Judge Crawford: Can you agree on the total number?

Mr. Sibley: Fifty per cent of any they want to bring in. Line them up here and give their names.

Mr. Gettler: We will handle it that way.

Judge Floyd: We were trying to figure it out on a calendar basis. By Christmas we could just about get through.

Mr. Sibley: I suggest on the stipulation he just made, we call them, all of his in the Sorrento and have them give their names and addresses to the reporter, and call them in all the other hotels and give the same thing, so at final hearing we can have something to check the names against.

Judge Floyd: At this moment, so it may be cleared up, I am interested in who they designated as their bargaining agent, and what date they designated, and whether [fol. 92] or not they designated more than one union.

Mr. Gettler: We have shown by Edward Bareau, he designated only 255 as bargaining agent. He designated them back at least four or five months ago. Now, on Mr. Pissani, of course your Honor heard the evidence. There is a little conflict.

Judge Floyd: He is a member of Local 133.

Mr. Gettler: Mr. Bareau specifically stated he had designated Local 244 (sic) as the collective bargaining agent prior to the walkout—several months before.

Judge Floyd: The other gentleman designated one orally and one in writing.

Mr. Gettler: Right.

Judge Floyd: Maybe it is not going to make any difference. At this moment I would like to be clarified on it, as to whether or not it makes a difference. It impresses me at this time, if you are going to bargain for someone, that the hotel has got a right to know who they must be held to bargin (sic) with.

(Thereupon counsel argued to the Court.)

Mr. Gettler: I can call Mr. Herman for that one point. I do not want to confuse the record, therefore I will limit [fol. 93] my examination to that one point and recall him later for the other points which I would like to examine him on. That point will only be the relationship and identity of Local 255 and the Hotel Trades Council.

Judge Floyd: Let us hear the mass testimony first.

Mr. Gettler: Your Honor, in the discussion your Honor reminded me of one point that actually I had forgotten. That was in regard to the testimony of Mr. Bareau, in being a member of Local 133. The 50 per cent that would testify as Mr. Bareau, I am afraid I could only stipulate we could change that from 133 to 255. None of these people were members of 133, but on the contrary, were members of 255.

Mr. Gramling: How many are members of 133, and hold up your hands.

Judge Floyd: Wait a minute. That gentleman already testify (sic), Mr. Bareau.

Mr. Gramling: You are 133. Did I see another hand up?

Mr. Gettler: We would stipulate that Paul Honig and Isidoro Brinie would testify in the same manner on direct and cross as Mr. Edward Bareau.

[fol. 94] Mr. Sibley: That is fine.

Mr. Gettler: As to the remainder, we would stipulate, as has been suggested by Mr. Sibley, that half of them would testify as Mr. Bareau, with the exception they would state they were members of 255 rather than 133, and the other half would testify in the same manner as Mr. Albert Pissani.

Judge Floyd: Wait a minute now. Half of them are going to testify they walked out on April 19th; that they participated in a secret ballot on May 25th, and voted to walk out on strike.

Mr. Sibley: No testimony in reference to secret ballot on this one.

Judge Floyd: There is in Mr. Bareau's testimony.

Mr. Gettler: The two objectionable questions you objected to.

Mr. Sibley: You are talking about the 25th?

Judge Floyd: That is right. There was no shop meeting held, if that is what you mean.

Mr. Sibley: No; I am talking about the other.

Judge Floyd: The other half were going to testify they also walked out on April 19th; they participated in a secret ballot on May 25th; they designated the Miami Hotel

[fol. 95] Trades Council their bargaining agent after the walkout.

Mr. Sibley: Right.

Mr. Gettler: And prior to the walkout they orally designated Local 255 as their collective bargaining agent.

Judge Floyd: That is right.

Mr. Gettler: And also the first half would testify just as Mr. Bareau did, prior to the walkout they designated Local 255 as their collective bargaining agent, and signed the cards like the card your Honors have in evidence, and they were members of Local 255 prior to the walkout.

Judge Floyd: All right.

Mr. Gettler: We will continue with the names:

> Otto Schmidberger, pastry chef; Leo Abecasis, breakfast chef; Ann Swett, cashier, food checker; Raphael Collasso; Isadore Brenide, cook; Rudolph Sovare, dishwasher; Angel Miranda, busboy; Emanuel Voight, waiter; Thomas Am; Asomatsu Sakata, pantry man; Laura Boulware, maid; Joyce Harden, maid; Julio Allegra, dishwasher; Elizabeth Murphy, maid; Dora Brown, maid; Hilda McMillan, maid; President King, houseman; Stanford E. Harris, lobby porter; Ida Mae Miller, maid; Ethel May Wilkerson, maid; Norman Morgan, porter; Ann King, laundress; Emanuel F. Nunes, dishwasher; Carlos Gonzales, pantryman.

Mr. Sibley: I have no objection to these sitting in the courtroom.

Judge Floyd: Do you have any objection to these witnesses being excused. They may leave if you have no [fol. 96] objection.

Mr. Gettler: I have no objection, but they can stay in court, if they want.

Judge Floyd: They can, or they may leave. I would like to hear from the Sherry Frontenac, if it is convenient to call them in that order.

Thereupon—DAVE GOLDBERGER was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and address, please?
A. Dave Goldberger, 714 15th Street, Miami Beach.
Q. What was your last occupation?
A. I was a bellman.
Q. At what hotel?
A. Sherry Frontenac.
Q. How long did you work there?
A. A period of two years.
Q. And did you walk out of the Sherry Frontenac as a protest on April 16, 1955?
A. Yes, sir; I did.
[fol. 97] Q. And was that approximately at 4 p.m.?
A. Yes, sir.
Q. Are you a member of Local 255?
A. Yes; I am.
Q. Have you designated Local 255 as the collective bargaining agent to represent you and deal with your employer on labor-management matters?
A. Yes; I have.
Q. Do you desire that Local 255 represent you?
A. All the way.
Q. Now, prior to the walkout on April 16th, was there a meeting held at the Sherry Frontenac, called by management?
A. Yes.
Q. When was that?
A. 4 o'clock in the afternoon on the 15th.
Q. The 15th day of April?
A. Yes, sir.
Q. And how were you advised of that meeting?
A. I was told by the manager that if I walked out of the job——

Q. I am asking how were you advised there was a meeting?

A. I was told to be at the Pompador Room at the same [fol. 98] hotel at 4 o'clock for a meeting.

Q. Who told you to be there?

A. My direct department head.

Q. And what is his name?

A. Al Ronin.

Q. Did you go to the room?

A. Yes; I did.

Q. That was held in the Pompador Room?

A. Yes.

Q. Who was there on behalf of the management?

A. The general manager; the assistant manager.

Q. What are their names?

A. Irwin Freid, manager; Bernie Frasrand, who is director of the bar and various other concessions that are there in the hotel; the superintendent of service; the housekeeper—practically every department head was there in the hotel.

Q. Who spoke at that meeting?

A. Mr. Freid.

Q. Mr. Freid, the general manager?

A. Yes.

Q. What did he say?

A. Well, in words around about way, he said, if we were not loyal and didn't stay with the hotel, and if we walked out of our job at the time called, we would be replaced. [fol. 99] If replacements were satisfactory, they would stay. We would not come back to work in that hotel again.

Q. That was on April 15th?

A. Yes.

Q. Did he advise you he knew there was going to be a walkout the following day?

A. Yes; he did.

Q. Now, prior to that had Mr. Rollin, your immediate supervisor, spoken to you in regard to the impending walkout?

A. Yes; he did.

Q. When was that conversation?

A. Two days before the meeting.

Q. That would be on April 13th?

A. Yes.

Q. Tell us about that conversation?

A. He asked me, if there was a walkout, would I walk out. I said, "Not only would I walk out, I would be the first one out on the street." I was surprised he didn't fire me then and there at that moment.

Q. Had you had any complaint in regard to your employment?

A. Have I got complaints?

Q. I said, did you have any then?

A. Many.

[fol. 100] Q. What were they?

A. I work eight days a week.

Q. Well, now, you are being literal. Will you give the actual——

A. Yes, sir; I work eight days a week. On the ninth day is my day off and I'm docked.

Q. You work eight consecutive days, and you are off on the ninth day?

A. Yes.

Q. When you were off the ninth day you lost——

A. I lost my $2 pay for being off the ninth day.

Q. What was your daily pay?

A. $2 a day.

Q. Did you have any other complaints?

A. If I ever had a complaint I couldn't possibly go to anybody with it, I was told. I lived in Florida for 16 years. I came down in 1939. I am a registered voter. I have worked in other hotels. The same applies to every hotel in the Beach.

Q. Just tell us about the Sherry Frontenac.

A. I complained to my superintendent of service. He told me if I didn't like it I could quit and get out.

Q. And therefore you designated Local 255 to bargain for you; is that correct?

A. Yes, sir.

[fol. 101] Q. Now, when you had the conversation on April 13th with your immediate supervisor, or Mr. Rollin, did you tell them that Local 255 represented you?

A. No, sir; I wasn't asked.

Q. Was any statement made by Mr. Freid in regard to what would happen to your possibility of employment at other hotels in the event you walked out?

A. He said as far as he was concerned, he would never hire any one of us where he had any jurisdiction in any other hotel that walked out on that job.

Q. Now, on April 16th did you walk out?

A. Yes, sir; I did.

Q. Did you do so voluntarily?

A. Yes, sir; I did.

Q. Did anyone threaten or coerce you?

A. No, sir.

Q. Have you participated in the picketing?

A. Yes, sir; I was a picket captain.

Q. Has it been peaceful?

A. Yes; it has been peaceful, because I am picket captain.

Q. On May 25, 1955, did you participate in a secret ballot strike election?

A. When, sir?

[fol. 102] Q. May 25, 1955?

A. Yes, sir; I did.

Q. Now did you vote?

A. Yes.

Q. Meaning, yes, in favor of a strike?

A. Yes; in favor of the strike.

Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. You were a bellman; is that correct?

A. That is correct.

Q. You had considerable income from tips, did you not?

A. I wouldn't say considerable, sir.

Q. You had income from tips?

A. I had income; yes.

Q. You designated 255 as your bargaining agent, I understand?

A. Yes, sir.

Q. You did that in writing by signing a card; is that correct?

A. Yes, sir.

Mr. Sibley: We move to strike the witness's testimony until the card is produced.

[fol. 103] Judge Floyd: Motion granted.

Mr. Gettler: The motion, as I understand, Mr. Sibley, is not as to all the testimony. He is only speaking of of (sic) the question as to the designation.

Judge Floyd: The designation; yes.

By Mr. Sibley:

Q. Is that the card to which you refer?

A. Yes, sir.

Q. And that is the designation you made of 255 as your bargaining agent; is that correct?

A. I would designate the devil itself if I could be allowed to walk out of my hotel——

Judge Floyd: Just answer the question, Mr. Witness.

Q. This is what you refer to as the designation?

A. That is; yes, sir.

Mr. Sibley: We ask that the card be marked for identification, unless counsel would like to put it in.

Judge Floyd: Do you want to handle this as with the others?

Mr. Gettler: We will wait until counsel is on his case.

Judge Floyd: We will mark it Plaintiff's (sic) for [fol. 104] identification 2-R, Sherry Frontenac.

(The document referred to was thereupon marked, "Plaintiff's Exhibit 2-R Sherry Frontenac, for identification.")

By Mr. Sibley:

Q. Mr. Goldberger, the meeting which you referred to in which Mr. Freid spoke, he announced at the time that the conversations—the statements he was making to you were being recorded, did he not?

A. Yes, sir.

Q. You know we have a record of exactly what was said at that time?

A. Yes, sir.

Q. Now, you are not attempting to quote the language used by Mr. Freid in your testimony, are you?

A. No, sir.

Q. You have given us your version of what you thought he said?

A. As I remember it.

Mr. Sibley: Fine, sir. No further questions.

Mr. Gettler: No further questions.

Judge Floyd: Will either one of you want this witness again?

Mr. Sibley: No, sir.

Mr. Gettler: No, sir.

[fol. 105] Judge Floyd: He may be excused.

Mr. Gettler: Is there any objection to him remaining in the courtroom if he cares to?

Judge Floyd: No objection.

Thereupon—Emanuel Comas was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and address, please?

A. Emanuel Comas, 7450 Byron Avenue.

Q. Where was your last place of employment?

A. Sherry Frontenac.

Q. How long did you work there?

A. Five months.

Q. What was your job at the Sherry Frontenac?

A. Bartender.

Q. Did you walk out of the Sherry Frontenac as part of a protest walkout on April 16, 1955?

A. I did.

Q. Did anyone intimidate, threaten or coerce you to do that?

A. No, sir.

[fol. 106] Q. Have you been in the picket line?

A. Yes.

Q. Has it been peaceful?

A. Yes.

Q. Did you at any time designate Hotel Employees Union, Local 255, A. F. of L., as your collective bargaining agent?

A. I did.

Q. Did you request that local union to negotiate on your behalf with your employer on all matters dealing with wages, hours and conditions of employment?

A. I did.

Q. Mr. Comas, I will show you a card on which those statements are made, and ask you if that is the card you filled out?

A. Yes, sir.

Q. Do you recall when this card was filled out, Mr. Comas?

A. I didn't hear.

Q. When was this card filled out—before or after the walkout?

A. It was after.

Q. The walkout was on April 16th. Do you recall when this card was filled out?

[fol. 107] A. Yes.

Q. When was it?

A. I don't recall the date.

OFFER IN EVIDENCE

Mr. Gettler: I will offer this card in evidence at this time.

Mr. Sibley: May I see it, please?

Mr. Gettler: Yes.

Mr. Sibley: We have no objection.

Judge Floyd: Admitted without objection and marked, Defendants' Exhibit A—Sherry Frontenac.

(The document referred to was thereupon marked, "Defendants' Exhibit A—Sherry Frontenac.")

Q. Did you participate in a secret ballot strike election on May 25, 1955?

A. Yes.

Q. And how did you vote?

A. I voted——

Q. Did you vote to strike or not to strike?

A. I voted to strike; yes.

Mr. Gettler: No further questions.

Cross examination.

By Mr. Sibley:

Q. Are you a member of Local 133?

A. No, sir.

[fol. 108] Q. Are you a member of the bartenders union?

A. 255.

Q. You never were a member of Local 133?

A. No, sir.

Mr. Gettler: When did you join Local 255?

The Witness: I was from Local 6, and I got a T.C. card, and then I got 255.

Mr. Gettler: When did you actually then get into Local 255 as a member of Local 255? Give us the date as close as you can recall.

The Witness: I can't recall the date.

Mr. Gettler: Can you tell us whether it was before the walkout or after the walkout?

The Witness: Before the walkout.

Mr. Gettler: Can you tell us approximately how long before the walkout? A week, or a month—a year—what?

The Witness: It was a couple of weeks.

Mr. Gettler: Now, Mr. Comas, you were at a meeting called by management, were you not?

The Witness: No, sir.

Mr. Gettler: That is all.

By Mr. Sibley:

Q. Have you got your union card on you, sir?

[fol. 109] A. No; I haven't.

Q. 255. You got Local 6 of New York on you?
A. No; I have it home.
Q. When did you come to Miami Beach?
A. I came three and a half years ago.
Q. Have you always been a member of Local 6 in New York until you went to 255?
A. That's right.
Q. And Mr. Herman is the head of Local 6 in New York?
A. That's right.

Mr. Sibley: That is all.
Mr. Gettler: Step down. May the witness remain in the courtroom if he desires, your Honor?
Judge Floyd: Yes.
Mr. Gettler: Mr. Joseph Serniac of the Sherry Frontenac. At the same time call Mr. Charles Fontaine, also of the Sherry Frontenac.

Thereupon—CHARLES FONTAINE was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and your address?
[fol. 110] A. Charles Fontaine, 7710 Lenox Avenue, Miami Beach.
Q. Where was your last place of employment?
A. Sherry Frontenac.
Q. How long did you work there?
A. Three years, off and on.
Q. In what capacity?
A. A waiter.
Q. On April 16, 1955, did you, in company with other employees of the Sherry Frontenac, walk off your job in protest of certain matters?
A. Yes; I did.

Q. Did you do so voluntarily?

A. Yes.

Q. Did anyone threaten, coerce or intimidate you?

A. No, sir.

Q. Now, prior to April 16th had you at any time designated Local 255 to represent you in dealing with your employer on labor-management matters?

A. Yes, sir.

Q. I show you a card in which it states, "I hereby designate Hotel Employees Union, Local 255, A. F. of L., as my bargaining agent. I request the union to negotiate on my behalf with my employer on all matters dealing with wages, [fol. 111] hours and conditions of employment." I ask you if that is the card you signed? Is that your signature?

A. Yes, sir.

Q. That is the card you signed?

A. Yes.

Q. Do you recall when you signed this card?

A. Well, I tell you. See, I had been a union member since last June. Anyway, I have been a local member since last June, of last year.

Q. Since June of 1954?

A. Yes.

Q. You have been a member of Local 255?

A. That's right.

Q. Was that card signed at the same time you joined the local?

A. Well, this one here I had signed when I walked out, but my record has been in Washington Avenue all the time since June.

Q. How long before you walked out did you sign a card?

A. It was a couple of days before it happened.

Q. A coupie of days before?

A. Yes.

Q. But you had been a member of Local 255 since June [fol. 112] of 1954?

A. Yes.

Q. Did you have certain complaints against the Sherry Frontenac Hotel?

A. Yes; I did.

Q. Can you tell the court what those complaints were, as briefly as you can?

A. It was mostly the food. I used to spend a lot of money eating out. I couldn't stand the food. Then, my job wasn't safe. I got along, but I know a lot of people that got fired for nothing—for no reason at all.

Q. Did you ever make complaints to management?

A. Well, one of the girls had told Mr. Fry, who was the steward of the kitchen, that the whole staff was not satisfied with the eating, and he never did anything about it. We just kept going on bad.

Q. Was that before the walkout?

A. Oh, definitely. That was a good six weeks before the walkout.

Q. On April 15, 1955, were you called to a meeting at which Mr. Irving Freid was present and addressed you?

A. Yes.

Q. When did that meeting occur—about what time of day?

[fol. 113] A. Around 5 o'clock in the afternoon.

Q. Who attended that meeting?

A. Well——

Q. What department of the hotel in particular?

A. That was the dining room.

Q. Had there been an earlier meeting at 4 o'clock of other departments?

A. Yes.

Q. Who addressed the meeting?

A. Mr. Freid.

Q. Will you tell the court, as nearly as you recall, what Mr. Freid said at the meeting?

A. He said something about that the strike has been on a few days and that what we were going to do if we were told to go on strike, and if we would be loyal to the hotel, and also if we walked out we would never come back to work if the union loses.

Q. But the next day you did walk out, however?

A. That's right.

Q. On May 25, 1955, did you participate in a secret ballot strike election?

A. Yes.

Q. How did you vote—for or against the strike?
A. I voted for the strike.

[fol. 114] Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. As I understand it, Mr. Fontaine, you signed the card the day you walked out; is that correct?

Mr. Gettler: Excuse me, your Honor. I forgot one thing. That is to offer the card in evidence, which I would like to do at this time.

Mr. Sibley: Let me ask him about it. Then I will give it to you.

Q. As I understand it, you signed the day you walked out?
A. I don't remember if exactly it was—I don't recall the exact date.
Q. I understood you to say that you signed it the day you walked out.

Mr. Gettler: Mr. Sibley is confusing the witness. The witness stated several days before.

Mr. Sibley: That was after you said, how long before.

Q. Did you sign this the day you walked out?
A. I told you I think it was a couple of days before.
Q. Do you know when it was?
A. Not exactly, since the strike has been on seven weeks. [fol. 115] I mean, I feel it too—money and everything.
Q. Were you ever a member of Local 133?
A. No.

Mr. Sibley: I have no objection to the card being introduced in evidence.

Judge Floyd: Admitted without objection and marked Defendants' Exhibit B-Sherry Frontenac.

Judge Gordon: You say you complained about the food. Were you supposed to be furnished food under your contract of employment with that hotel?

The Witness: Yes. In our two weeks pay, I don't know how much exactly in amount of money, but as you know,

you can tell my build. I lost a lot of weight, and that is no lie. I ate out plenty. I made about $80 or $80 (sic) a week. I think I spent $30 or $40 a week outside, eating.

Judge Gordon: How were you paid?

The Witness: $1.50 a meal. I worked two meals a day. That is two meals, six days a week.

Judge Gordon: Did you pay for your meals at the hotel?

The Witness: Well, I know—like I told you, in the check we get in there it says $6 or $8 for food.

Judge Gordon: Then you paid for what you got. You [fol. 116] got paid your other money outside of that. It was not part of the hotel's duty to furnish you food under the contract of employment?

The Witness: Yes; it is supposed to be.

Judge Gordon: How much?

The Witness: I wouldn't know about the price, but I know every hotel, especially the dining room and kitchen staff is supposed to get fed, and I lived in a hotel where all the employees have lived, and there was a complaint all the way down the line. They gave us food a couple of days old, and stews. A couple of us got sick a couple of times. The only time I ate there was breakfast.

Redirect examination.

By Mr. Gettler:

Q. What hours did you work?

A. About 7:30 in the morning. I would be there until 12 noon for breakfast. Then 5 o'clock until about 9:30 at night.

Q. How many days a week?

A. Six days.

Mr. Gettler: That is all.

Recross examination.

By Mr. Sibley:

Q. You worked for breakfast—you served breakfast? [fol. 117] A. Yes.

Q. How long did that take?

A. Well, we got to be there at 7:30, and we used to get through 12 or 12:15, all according to how the people came in.

Q. Did you serve lunch also?

A. No.

Q. Then you came back for dinner at night?

A. Yes; 5 o'clock.

Mr. Sibley: That is all.

Mr. Gettler: Step down.

Mr. Gramling: I was going to state into the record, please, that we have literally thousands of them. Some of them have left town, and some are sick, and for one reason or another are not here, and we are calling people that are here. Actually we have many more people than are personally here.

Judge Floyd: I understand that.

Thereupon—Ramon Hidalgo was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and address, please?

[fol. 118] A. Ramon Hidalgo, 13750 Northwest 4th Street, Miami.

Q. Where were you last employed?

A. Sherry Frontenac.

Q. What was your job?

A. Dishwasher.

Q. And are you a member of Local 255?

A. Yes.

Q. When did you join Local 255?

A. One moment. I don't speak English.

Mr. Gettler: Withdraw the question.

Q. Did you walk out of your employment when there was a picket line put in front of the hotel on April 16th?
A. Yes.
Q. I will show you a card——

Judge Gordon: If you want an interpreter here, one who can interpret, Mr. Pardo will interpret.
Mr. Sibley: I have no objection.
Judge Floyd: Do you want the interpreter sworn?
Mr. Warren: I would swear him for the record, if I may suggest, to avoid any capricious action on the part of the Supreme Court.

(Thereupon Joseph Pardo, Esq., was sworn in as interpreter by the Court.)

[fol. 119] By Mr. Gettler:

Q. Mr. Hidalgo, did you sign this card which I am now handing you?
A. Yes.
Q. When did you sign the card?
A. What it shows on the card—approximately one month prior to the time it shows on the card.
Q. Did you sign the card before the walkout on April 16th, or after the walkout on April 16th?
A. I signed the card before the walkout.
Q. Approximately how long before the walkout?
A. Approximately one month before.
Q. Did you participate in a secret ballot strike election on May 25, 1955?
A. Yes; I participated.
Q. Did you vote for a strike or against a strike?
A. For the strike.

Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. Mr. Hidalgo, where have you been since 10 o'clock this morning? Have you been outside the courtroom?
A. Yes. I have been here since 9:30.

Q. Did you discuss the case with anybody outside of [fol. 120] the courtroom?

A. I was with my friends from the hotel.

Q. Did you discuss the case with your friends from the hotel?

A. I have been discussing more or less the things about Cuba.

Q. Did you discuss the case while you were out there?

A. Yes; I was discussing in regard to being to court today.

Q. With whom did you discuss the case?

A. I have been talking with people I have been working with.

Q. Do you know Mr. Michel?

Mr. Warren: Would Mr. Pardo speak up a little louder so we can pick up a little Spanish?

The Witness: I know Mr. Michel because he is a member of the union.

Q. Did Mr. Michel discuss the case with you outside, while you were waiting?

A. No; he hasn't discussed the case. He has been talking——

Q. Have you been talking to Mr. Michel while you were outside the courtroom?

[fol. 121] A. No; I haven't been talking to Mr. Michel. I have only been talking about my own testimony.

Q. Who were you talking to about your own testimony?

A. I have been talking with my own conscience. I think that no one should be able to tell me what to say.

Q. Do you know the day you signed this card?

A. I don't know the exact date, but I believe it was about one month, but it was my own desire to do so.

Q. Did you sign any other card besides this?

A. I have a book.

Q. Will you produce it, please?

A. Yes.

Mr. Sibley: We ask to be marked for identification the book that was produced by the witness.

Judge Floyd: It will be marked for identification, Plaintiff's Exhibit 3-R Sherry Frontenac.

(The document referred to was thereupon marked, "Plaintiff's Exhibit 3-R Sherry Frontenac.")

Q. Mr. Hidalgo, do you recall the date you got the little book?

A. I don't have a very good memory to remember the exact date, but I believe it was about 25 days before I signed the card to belong to the union.

Q. Now, which did you receive first, the card or the [fol. 122] book?

A. First thing I did was get the card, and the second was that I received the book—and the second was to get the book which was secured from Washington.

Mr. Sibley: That is all.

Judge Floyd: Do you have any objection to the card?

Mr. Sibley: None whatever.

OFFER IN EVIDENCE

Mr. Gettler: I offer it in evidence at this time.

Judge Floyd: It will be marked Defendants' Exhibit C-Sherry Frontenac.

(The document referred to was thereupon marked, "Defendants' Exhibit C-Sherry Frontenac.")

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Gettler: Are you finished with the witness?

Mr. Sibley: Yes, sir.

Mr. Warren: Our client desires to thank you, Mr. Pardo, for the interpretation.

Mr. Gettler: If it is possible I would like to work out a stipulation as to the rest of these people so we do not need to keep too much of your Honors' time going one after the other. Is there any possibility, Mr. Sibley?

Mr. Sibley: Bring them in. Separate their cards that [fol. 123] you have got of each one that comes in, and we will consent that they will testify substantially as testified by the last witness, subject to any change in dates indicated by the cards.

Mr. Gettler: We will so stipulate. Ask everyone from the

Sherry Frontenac to please come in, and we will announce the names:

Leona Pratt, maid; Raymond Howard, houseman; Frank Frith, bellman; Edith Saunders, maid; Leonard Amundis, busboy; Juan Borrero, dishwasher; Juan Diaz, dishwasher; Louis Cabaliero, head busboy; Jose Berojo, busboy; Aura Martinez, elevator girl; Ramon Fumero, busboy; Jose Rodriguez; Raphael Collazo, kitchen man; Jaime Garcia, vegetable cook; Ann Lewis, maid; Irene Halusk; elevator operator; Anna Grillmeyer, maid; Louis Lopez, glasswasher; Albert Carrera, porter; Jose Iglesie, busboy; Edward J. Vail, houseman; Juan Hernandez, busboy; Jose Cancel, busboy; Elfemio Ruiz, dishwasher; Louis Serrano, dishwasher; Lawrence W. Moore, house porter; German Borrero, dishwasher; Principal Ofelicieno, kitchen man; Paul Biebar, room service waiter; Ben Glass, waiter; Louis Hormilla, waiter; Richard Mughmaw, bellman; Venno Faschmann, waiter; Joseph Sargaissi; Louis Berkowitz, bellman; Ben Steele, waiter; Catherine McKinney, laundry; Anna Lee Clements; Amelia McCormick, laundry; Coral Bell Ford, laundry; Marcos Ramirez, busboy; Michael Meccarie, waiter; Fred Cunill, vegetable cook; Raphael Garcia, dishwasher; Juan Rodriguez Crespo, dishwasher; Royas Vicente, iceman.

Judge Floyd: Are you through with these people now?

Mr. Gettler: Yes.

Mr. Sibley: I am through with them.

[fol. 124] Judge Floyd: You folks may be excused. When we reconvene at 2 o'clock you can either come back or be excused from the hearing, whichever you prefer.

Judge Crawford: That just applies to the ones standing up that you have finished with.

Mr. Gettler: We have some people, we find, that we do not have cards for. The only thing we can do in that case is to call each one, or call one and maybe stipulate to the rest, as to whether they orally designated Local 255.

Mr. Sibley: Do they have any union book? We can put the date of the union book in.

Mr. Gettler: The union book has no relation to when they signed the cards. The record is sent away, and the book is sent in to Washington. That takes a good deal of time.

Mr. Sibley: From Washington?

Mr. Gettler: Until it goes through all the procedure necessary. There is no relation from the date of the book and the date of designation.

Mr. Gramling: If it is the ruling of the court that this is the best evidence, in the absence of that certainly the court will prefer the individual to testify as to whether they signed one, and when they did.

[fol. 125] Mr. Sibley: I agree. Let us get these in first. The court rules this is the best evidence. Let us put these in.

Mr. Gettler: As I understood the stipulation, your Honor, the stipulation was that the witness would testify the same as the last witness, subject to anything different shown on the card. I would suggest, since I do not want to give up the cards, to give these to the reporters and let the reporters note after each name what style of card was signed, and any date there might be, and have the reporter return these to us.

Judge Floyd: I will hold them. They will not be walking away. We can make photostatic copies whenever you need the originals. Let us introduce these as one exhibit. They will be Defendants' Exhibit D-Sherry Frontenac.

(The documents referred to were thereupon marked, "Defendants' Exhibit D-Sherry Frontenac.")

Judge Crawford: Can you stipulate on these other witnesses?

Mr. Gramling: I do not know. Will you stipulate they signed an authorization card?

Mr. Sibley: You can find out.

[fol. 126] Mr. Gettler: If we have no card, there was no card signed. We can put them on that they orally designated.

Judge Floyd: Will they all testify that they did not sign a card?

Mr. Gettler: On that I do not know, your Honor, except by asking them individually.

Mr. Sibley: How many are there?

Mr. Gettler: Eight.

Mr. Gramling: Can we run them through one at a time? We do not know honestly ourselves if they signed.

Mr. Sibley: I think it is subject to my right on all this to object. I will concede that these men designated 255 as their bargaining agent. What date do you want to put in?

Mr. Gettler: Prior to April 16th.

Mr. Sibley: I will do it, about in the equal proportion as shown by the cards—some before and some after.

Mr. Gettler: May I join in the stipulation, if they were called to testify, they would testify substantially the same as the last witness who testified, with the one exception, [fol. 127] they would testify that any designation of theirs was done orally rather than by writing.

Mr. Sibley: I think so.

Judge Floyd: Most of these are after.

Mr. Gettler: We have stipulated it would be the same as the preceding witness. What are your names—the names of the persons to whom the stipulation applies.

> Jose Rodriguez; Jose Borrero; Jose Iligli; Juan Crespo; Louis Hormilla; Louis Colon; Elfemio Ruiz and Jose Figuero.

Judge Floyd: Is that all you want with these witnesses?

Mr. Gettler: That is all.

Judge Floyd: You may be excused. That is everything we need on the testimony in the Sherry Frontenac?

Mr. Gettler: That is right.

Judge Crawford: We will recess until 2 o'clock.

(Thereupon a recess was taken until 2 o'clock p. m. of the same day, at which time the following proceedings were had:)

Mr. Gettler: Your Honor, in order not to make any error, I want to ask that everyone who has not previously testified, to go on outside and wait out there. Call Mr. [fol. 128] Porro of the Monte Carlo.

Thereupon—HENRY PORRO was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and address, please?
A. Henry Porro, 44 Northwest 6th Street.
Q. Where was your last place of employment?
A. Monte Carlo Hotel.
Q. What was your job?
A. Waiter.
Q. How long did you work there?
A. About almost two years and a half.
Q. Are you a member of Local 255?
A. Right.
Q. Have you designated Local 255 as your collective bargaining agent?
A. I did so.
Q. I will hand you a card, and ask you if you signed that card?
A. I signed that card.
Q. I will ask you when you signed that card?
[fol. 129] A. I signed that card before the strike.
Q. How long before?
A. About, I think, 10 days before. I went on the 13th, two months ago.

Offer in Evidence

Mr. Gettler: I will offer this card in evidence in the Monte Carlo case.
Mr. Sibley: May I qualify the witness a moment?
Judge Crawford: Yes, sir.

Cross examination.

By Mr. Sibley:

Q. Mr. Porro, on what day did you strike?
A. On the 13th.
Q. 13th of what?
A. Almost two months ago. On the 13th was a Wednesday.
Q. Of April?

A. We are in June—April.

Mr. Gettler: We can agree to April, counsel.
Mr. Sibley: I would like to test his recollection, if I can.
Judge Crawford: Go ahead.

Q. Where did you sign this card?
A. I signed that card in the hotel.
Q. The Monte Carlo?
A. Yes.
[fol. 130] Q. Who presented that card to you?
A. Some of the member of the Local 255.
Q. Who?
A. Someone.
Q. Do you know who?
A. Well, he was an organizer of Local 255.
Q. Do you know his name?
A. I know his name.
Q. What is his name?
A. Smitty.
Q. He asked you to sign that?
A. I signed it. He gave me to sign. I signed it from my own will.
Q. Were you a member of Local 133?
A. I been a member of the American Federation of Labor for 14 years. I am a member of Local 255 for a year and a half.
Q. Are you a member of Local 133?
A. I was a member of Local 133. I am a member of 255 since last year.
Q. Is that your——
A. This is my book. Shall I show it to him?

Mr. Gettler: Yes.
Judge Crawford: Yes.
[fol. 131] Mr. Sibley: We have no objection to the introduction of the card. I would like permission to retain this until cross examination, if I may. I will give it to the witness.
Judge Crawford: The card is marked, A-Monte Carlo.

(The document referred to was thereupon marked, "Defendants' Exhibit A-Monte Carlo.")

Redirect examination.

By Mr. Gettler:

Q. Did you walk out of your employment in concert with other employees of the Monte Carlo on April 13, 1955?
A. Yes.
Q. And have you been on the picket line?
A. All the time.
Q. And has the picketing been peaceful?
A. Yes, sir.
Q. On May 25, 1955 did you vote in a secret ballot strike election?
A. Yes, sir.

Mr. Sibley: Will your Honor permit the same objection I have made before?
Judge Crawford: All right.

Q. Did you vote to strike or not to strike?
[fol. 132] A. To strike.

Mr. Gettler: That is all.

Recross examination.

By Mr. Sibley:

Q. Did you say you were a member of Local 133?
A. I was.
Q. When did you become a member of Local 133?
A. Just when I came from New York. I was a member of Local 6 in New York. I came down here in 1946; became a member of Local 133 in 1946, up until 1951. 1951 I went to Chicago and belonged there to Local 25. I came back down here to Local 133, and I was working at the Monte Carlo Hotel; they told me I had to join Local 255 because it was the hotel local in Miami Beach. So since last year I am a member of Local 255.
Q. You are talking about 1954?
A. 1954.
Q. Who did you pay your dues to in 1954?
A. I was—I went Cuba. I was working in the Monte Carlo. I went to Cuba and I got a permit from the union

not to pay my dues when I was in Cuba, when I wasn't working.

Q. When did you go to Cuba?

A. Last year, in December.

[fol. 133] Q. 1954?

A. 1953.

Q. In 1953?

A. I went to Cuba—last December was 1954. In 1953 I went to Cuba.

Q. What time did you come back from Cuba?

A. I came back I think around February.

Q. 1955?

A. 1954.

Q. 1954?

A. Yes.

Q. Who did you pay your dues to in 1954?

A. I didn't pay the dues. I said before I got a permit from the union because I wasn't working in a union place.

Q. When was the next——

A. By the way, I got another took (sic) too that doesn't show.

Q. One before this?

A. Yes.

Q. That was the last book?

A. That is the last book I got.

Q. Now, you are sure you did not go to Cuba in December, 1954?

[fol. 134] A. 1954—no.

Q. Were you in Miami in 1954, in December?

A. I was.

Q. You worked at the Monte Carlo?

A. At the Monte Carlo.

Mr. Sibley: That is all.

Mr. Gettler: Step down. Mr. Sibley, in order to save the court's time, do you think we might stipulate if these other people were called they would testify substantially the same as the last witness?

Mr. Sibley: Let me see all your cards.

Mr. Gettler: In order, as a matter of fact, to simplify it, suppose we simply offer all these cards in evidence, and in

addition stipulate if they were individually called they would testify as the last witness.

Mr. Sibley: You call who you want, and if you have cards for them I will let them go in.

Mr. Gettler: Are you objecting to the official cards of the union going in evidence?

Mr. Sibley: I am only objecting to the cards going in evidence for whom you have not persons here to identify their signatures.

[fol. 135] Mr. Gettler: Do I understand it then you are willing to enter into such a stipulation for those people who are here?

Mr. Sibley: I am willing, sir, for those people who are here, to stipulate that is what they would testify, what is reflected in the cards, both yellow and white, that you have, that are signed by those persons.

Mr. Gettler: May I have a stipulation that they would testify the same as the last witness, except insofar as the cards would show otherwise?

Mr. Sibley: What the cards show would be a part of their testimony. I will accept that, insofar as what the cards say would be their testimony.

Mr. Gettler: May we have all the people from the Monte Carlo give their names:

Patricia Angus, chambermaid; Julia Truett, maid; Luraine Treshu, maid; Julia Hopper, maid; Hazel Green, maid; Julius Barr, bartender; Ann M. Reynolds, assistant housekeeper; Brian Chubb, bell captain; Ruth Tango, waitress; Clara Mae Farmer, maid; George Hine, lobby porter; Manuel Feiria, bellman; Nathan Kelly, linen department; Clarenge Igal, bellman; Marie Goss, elevator operator; Jack Ariessohn, bar waiter; Andrew Garbin, bar porter; Robert Campbell, bar manager; Signe Macone, maid; Myrtle Walker, maid; Harold Bankel, waiter; U. McKillop, houseman; Francis Charge, engineer; Goldie Dendler, maid; Eva Bretherck, maid; Antonio Rodriquez; Moses Pietre, salad man; Louis Burgos, busboy; Gilbert Irisarry, dishwasher; Miguel Gonzales, dishwasher; Alberto Crespo, [fol. 136] kitchen porter; Joseph Silverman; Hilda Meyer, waitress; Augusta Francis, waitress.

Mr. Gettler: Now, those for whom we did not have signed cards, will you stand up? There are seven people. Mr. Sibley, can we stipulate these seven people would, if called, testify as the last witness testified, except they would testify they did not actually sign a card?

Mr. Sibly: No, sir; I can stipulate that as to these witnesses—I will stipulate they will testify that they authorized this union to work for them or to represent them after the walkout, and the reason I do that is that every card I believe you have produced, or practically every card, established by its date it was not signed until after the walkout.

Mr. Gettler: Rather than argue it, let me call the people.

Judge Crawford: If you wish to call the balance they better step outside.

Mr. Sibley: I have no objection to them being here.

Judge Crawford: You waive the rule?

Mr. Sibley: Just as to these six, to save time and confusion.

[fol. 137] Thereupon—CLARA MAE FARMER was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name, please?

A. Clara Mae Farmer, 273 Carlisle Drive, Miami Beach, Florida.

Q. Where were you last employed?

A. Monte Carlo Hotel.

Q. In what capacity?

A. Hotel maid.

Q. For how long?

A. Three years and two months.

Q. And on April 13, 1955, did you join in the general walkout at the hotel?

A. I did.

Q. Did you do so of your own free will, and without coercion?

A. I did.

Q. Were you a member of Local 133?

A. I am.

Q. Excuse me, are you a member of Local 255?

A. Yes.

[fol. 138] Q. Are you a member of Local 133?

A. No; I am not; 255.

Q. When did you join Local 255?

A. I joined Local 255 the first week in September of 1953.

Q. And did you designate Local 255 to be your collective bargaining agent in all dealings with your employer?

A. I did. I signed three different cards; one white card with gren (sic) printing; one yellow card, and one white card.

Q. And did you, by these signatures, designate Local 255 as your collective bargaining agent?

A. I did.

Q. Did you also designate orally Local 255 as your collective bargaining agent?

A. I did, and I do.

Q. Did you participate in a secret ballot strike election on May 25, 1955, to determine whether you wanted to strike?

A. I did.

Q. Did you vote to strike or not to strike?

A. I did.

Q. Did you vote to strike or not to strike?

A. To strike.

[fol. 139] Mr. Gettler: No further questions.

Cross examination.

By Mr. Sibley:

Q. Do you have your membership card in 255 with you here?

A. Yes, sir; I have. I am a charter member.

Q. And the date that you were initiated was March 1, 1954?

A. No; I was initiated before that, but I was initiated because—when we went in we had initiations as we went along. That was when the charter came through and new books were issued at that time.

Q. There was no local 255 before March 1, 1954?

A. Yes.

Q. That is when you got the charter?

A. Yes.

Q. And you were a charter member?

A. I was a charter member.

Mr. Sibley: That is all.

Mr. Gettler: Step down. May we stipulate as to the remaining six?

Mr. Sibley: No; I do not know whether they are charter members or not.

[fol. 140] Thereupon—GEORGE T. HINE was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and your address?

A. George T. Hine, 8500 Biscayne Boulevard.

Q. Where was your last place of employment?

A. Monte Carlo Hotel.

Q. How long were you employed there?

A. Three years and a half.

Q. What was your job?

A. Lobby porter.

Q. Did you join the general walkout on the hotel April 13, 1955?

A. Yes, sir.

Q. Did you do so of your own free will?

A. Yes, sir.

Q. Did anyone intimidate or coerce you to do so?

A. No, sir.

Q. Are you a member of Local 255?
A. Yes.
Q. When did you join local 255?
[fol. 141] A. I am a charter member.
Q. Therefore you were a member at least by March, 1954; is that correct?
A. Before that even; 1953.
Q. Well, in 1953 there was an organizing committee for Local 255, was there not?
A. In October, 1953, I joined.
Q. And the actual charter was issued March, 1954?
A. That's correct, sir.
Q. And did you designate Local 255 as your collective bargaining agent to deal with your employer on all labor-management matters?
A. Yes; I did.
Q. When did you do so?
A. When I joined the union. That's why I joined.
Q. That would be the latter part of 1953?
A. That's right.
Q. Did you participate in a secret ballot strike election on May 25, 1955?
A. Yes; I did.
Q. Did you vote to strike or not to strike?
A. Yes; I did.
Q. Did you vote to strike or not to strike?
A. I voted to strike.

[fol. 142] Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. Mr. Hine, to save time and trouble, how many of the people back there that did not have cards are charter members? Can you name them so we can save time on that?
A. I don't know how long they are in it. I wouldn't lie because I don't know.
Q. You do not know of any others, besides the lady who testified, who is a charter member?
A. Let me see.

Q. Because if there are any charter members I will waive further testimony.

Mr. Gettler: Will the rest of you stand up—the other five. Just stay there.

Mr. Sibley: No questions.

Mr. Gettler: Step down.

Thereupon—HAZEL GREEN was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name, please?

[fol. 143] A. Hazel Green, 110 Northwest 9th Avenue, Miami, Florida.

Q. Where was your last place of employment?

A. Monte Carlo Hotel.

Q. What was your job?

A. I was a maid.

Q. How long were you employed at the Monte Carlo?

A. About three months.

Q. Did you join in the general walkout on April 13, 1955?

A. Yes.

Q. Have you participated in the picketing?

A. Yes.

Q. Has the picketing been peaceful?

A. Yes.

Q. Are you a member of Local 255?

A. Yes.

Q. When did you join Local 255?

A. April 13th.

Q. That was the same day as the walkout?

A. Yes.

Q. And did you designate Local 255 as your collective bargaining agent to deal with your employer on all matters having to do with employment relationships?

[fol. 144] A. Yes.

Q. When did you do that?

A. Right away.
Q. As soon as you joined, on April 13th?
A. Yes.
Q. Did you have complaints concerning your employment?
A. No.
Q. On May 25th did you participate in a secret ballot election to determine whether you wanted to strike or not?
A. Yes.
Q. Did you vote in favor of a strike?
A. Yes.

Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. Do you have a book? Thank you. And this was given to you the day you joined, that is, April 13, 1955?
A. Yes, sir.
Q. What time did they walk out at the Monte Carlo?
A. It was in the evening at 6 o'clock—somewhere around there.
Q. When did they give you this book?
[fol. 145] A. When I went right down and joined.
Q. As soon as they walked out you went on down and joined?
A. No.
Q. How long after they walked out?
A. The next day, because I wouldn't cross the picket line.
Q. And April 13th was the day they walked out, and the next day you went on down and joined?
A. Yes; I wouldn't go across the picket line.
Q. Then you joined on April 14th, if the walkout was April 13th?
A. Yes.

Redirect examination.

By Mr. Gettler:

Q. Miss Green, you were a maid, you said?
A. Yes, sir.

Q. What were your wages?
A. $5.
Q. $5 a day?
A. Yes.
Q. For how many hours a day?
A. Well, sometimes eight and over.
Q. Eight and over?
[fol. 146] A. Whatever wasn't done, I finished.
Q. How long did you sometimes have to stay—how many hours?
A. Sometimes about ten hours.
Q. How many days a week did you work?
A. Seven days, unless we had someone to relieve us.
Q. If you had someone to relieve you, you got something deducted from your salary?
A. Yes; we would just get six days if someone relieved us.

Mr. Gettler: That is all.

Recross examination.

By Mr. Sibley:

Q. Do you get tips as a maid?
A. Occasionally.

Mr. Sibley: Yes, ma'am.
Mr. Gettler: Not very often though, do you?
The Witness: Not too large.
Mr. Sibley: I will stipulate they joined the union on April 13th, if you want me to.
Mr. Grambling: We do not know that ourselves.
Mr. Gettler: We will stipulate that these four, if called, will testify substantially the same as the last witness.
[fol. 147] Mr. Sibley: That is fine.
Mr. Gettler: We will get their names: Antonio Rodriguez; Gilbert Irizaary; Louisiano Burgos; Alberto Crespo. This if (sic) for the Sans Souci.
Mr. Sibley: Cards have to go in evidence as a part of my stipulation.

Judge Crawford: We will mark this as group exhibit B-Monte Carlo. There are 32 cards here in Exhibit B-Monte Carlo.

Mr. Gettler: Mr. Paul Porto of the Sans Souci.

Thereupon—PAUL PORTO was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and your address, please?

A. My name is Paul Porto, 163 Northwest 31st Street, Miami.

Q. Where was your last place of employment?

A. Sans Souci Hotel.

[fol. 148] Q. In what capacity?

A. Waiter.

Q. How long did you work at the Sans Souci?

A. For about three weeks previously to the walkout.

Q. On April 17, 1955, did you join the general walkout at the Sans Souci?

A. I did.

Judge Floyd: April what?

Mr. Gettler: April 17th.

Q. Did you do so volutarily (sic) and of your own free will?

A. I certainly did.

Q. Did anyone coerce or intimidate you?

A. No, sir.

Q. Have you walked on the picket line?

A. Yes, sir.

Q. Has the picketing been peaceful?

A. Very peaceful.

Q. Are you a member of Local 255?

A. At the present time I am not a member of Local 255, but I have given the authority to 255 to represent me in any union activities in the Beach. I am a member of 133.

Q. But you have designated Local 255 to be your collective bargaining agent?

A. Yes.

[fol. 149] Q. When did you do that?

A. About four months previous to the walkout.

Q. Now, on several days prior to the walkout was a meeting of the employees called by management at the hotel?

A. Yes, sir.

Q. When was that meeting called?

A. I believe it was called on the 14th.

Q. That is three days before the walkout?

A. On Thursday, I believe, if I am right.

Q. And who told you to go to the meeting?

A. The head of my department.

Q. Where was the meeting held?

A. At the Cavelier Room.

Q. What time of day?

A. About 4:30 in the afternoon.

Q. When you went to the meeting did you see any representatives of management there?

A. I saw Mr. Moore.

Q. Who is Mr. Moore?

A. General manager of the Sans Souci Hotel.

Q. Was there anyone else from management?

A. Most everybody in charge of the hotel.

Q. The various department heads?

A. I don't recall their names at present.

Q. Were the department heads there?

[fol. 150] A. Must be all the department heads were there.

Q. Did Mr. Moore address the meeting?

A. Yes, sir; he did.

Q. And will you tell us what occurred at that meeting?

A. Well, it was about the union and labor.

Q. About the union and labor?

A. Yes, sir.

Q. Did Mr. Moore say anything about the impending walkout?

Mr. Sibley: Do not lead the witness. Ask him what Mr. Moore said, please.

The Witness: Well, Mr. Moore painted a very pretty picture.

Q. After Mr. Moore finished speaking, what happened?

A. He asked if there was any questions.

Q. Then what occurred?

A. I asked him a few questions myself.

Q. Then you asked him questions. Will you tell us the questions you asked, and the answers you received?

A. I asked him how the hotel felt about the union activities. He told me he wasn't in a position to answer that.

Q. Did you ask him anything else?

A. He made some remarks about the working conditions [fol. 151] of the hotel. So I brought out a few conditions which I didn't like.

Q. Tell us exactly what you said, and exactly what he said.

A. I asked him about such as a waiter in my category. I said, "You think it is fair for a man to come in at 11:30 in the morning and be around that swimming pool, chasing the sun over there until 3:30 in the afternoon, for a dollar and a half, and go back; set up your station for the night, and if you are not there 4:30 in the afternoon on the dot you don't eat, and go back on 6 o'clock until 9:30 or 10 o'clock for another dollar and a half; is that working conditions?" Which I didn't get an answer.

Q. He did not answer you?

A. No.

Q. Was there any change made in your working conditions?

A. There was none because we walked out the following day.

Q. You stated this meeting was three days before the walkout?

A. Three days. It was on a Thursday.

Q. Now, on May 25, 1955, did you participate in a secret ballot strike election?

[fol. 152] Mr. Sibley: Same objection, your Honor.

Q. On May 25, 1955, did you vote in a secret ballot strike election?

A. No; I did not. Secret ballot?

Q. Yes.

A. Where, at the Sans Souci?

Q. No; I am talking about the secret ballot strike election that was held at the union headquarters on May 25th. Did you vote?

A. I most certainly did.

Q. Did you vote for or against a strike?

A. I did vote for a strike.

Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. When did you go to work for the Sans Souci?

A. Oh, about three weeks before the strike.

Q. And where did you work before that?

A. The Saxony Hotel.

Q. And were you working at the Saxony at the time of the strike?

A. No, sir.

Q. How long did you work at the Saxony?

A. From the time the Latin Quarter closed.

[fol. 153] Q. You worked at the Latin Quarter first this past winter?

A. Yes, sir.

Q. Then you went to the Saxony, and how long did you stay at the Saxony?

A. From the time the Latin Quarter closed until three weeks prior to the Sans Souci.

Q. When did the Latin Quarter close?

A. Offhand I don't know exactly what date it was, but I went as soon as I got through at the Latin Quarter—I went to work at the Saxony.

Q. That was sometime this spring?

A. Well, as a matter of fact I think I still got my pay check over here.

Q. Let us get it accurate.

A. That is my last pay check from the Saxony Hotel.

Q. I am still unable to tell the date.

A. That is not my fault. That is up to their bookkeeper over there to put the date on it.

Q. I understand, but can you tell me the date?

A. Yes, sir. My friend, they must have paid me because I worked. It is up to them to put a date to it.

Q. Do you know the date?

A. I don't know exactly, sir.

[fol. 154] Q. Give me your best recollection.

A. I couldn't, offhand. I couldn't tell you. If you look in your books, my name is there.

Q. Now, let me ask you this question. You have been a member of 133, and are still a member of 133?

A. Most certainly I am, sir.

Q. Are you a union organizer?

A. Me?

Q. I ask you; yes.

A. No, sir.

Q. Have you been employed either by 133 or 255 to go to any of these hotels to aid in organizing them?

A. No, sir.

Q. Have you got your picket line card there, showing the time you walked the picket line?

A. I am a picket; yes.

Q. Have you got a picket card showing the time you walked?

A. Certainly, sir.

Q. Let me see it, will you?

A. Yes.

Q. Do you know the first hotel in which you were a picket?

A. If I know the first hotel which I picket?

[fol. 155] Q. Yes.

A. Certainly, the Sans Souci.

Q. Were (sic) else then were you a picket?

A. I volunteered another one. As a union man I can volunteer any hotel.

Q. What other hotel did you picket, besides the Sans Souci?

A. The President Madison; the Saxony; the Roney; the Casablanca.

Q. You are a picket captain?

A. No, sir.

Q. Are you a supervisor of pickets?

A. No, sir.

Q. Now, let me see your 133 union card, will you, please?

A. There you are, sir.

Q. Your dues are paid in 133 up until and through March, 1955; is that correct?

A. That's right.

Q. Is 133 your bargaining agent?

A. I gave the authority to 255 to be my bargaining agent, being I work on the Beach.

Q. Don't you know that 133 has a number of houses over on the Beach which are union?

[fol. 156] A. Any time 133 can find a job in a house, I will go to work in the house. Being there were no jobs in the houses, therefore I had to go out and find a job.

Q. Did not the Saxony Hotel call 133 to have you employed there?

A. No, sir.

Q. You did not get employed through 133?

A. No, sir.

Q. Did you get employed at the Sans Souci through 133?

A. No, sir.

Q. You are not a member of 255?

A. 255 is my bargaining agent at the present time because I signed a pledge card and gave them the authority to represent me.

Q. When did you sign that card?

A. About four months ago.

Q. Where did you sign it?

A. At the Local 133.

Q. At 133?

A. When a meeting was called there.

Q. Who was present?

A. Mr. Herman was present, and Mr. Gonzales, and Mr. Michel was present there.

[fol. 157] Q. That was four months ago?

A. More or less.

Q. That would make it about February?

A. About that time.

Q. Were you working at the Latin Quarter at that time?

A. I believe I was.

Q. I beg your pardon.

A. I believe I was.

Q. Let me ask you this. What is the wage scale for waiters as fixed by Local 133, a week?

A. Wage scale for waiters?

Q. Yes, sir.

A. Well, as far as I know, that I work on the Beach, the wage scale for waiters——

Q. I am talking about 133 wage scale for waiters.

A. I haven't worked in one house that 133 has, for the simple reason I never worked in the jurisdiction of 133 has under their jurisdiction. I am not familiar with the wage scale of the houses for the simple reason I never worked in one of the houses.

Q. You do not know what the wage scale of 133 for waiters is?

Mr. Gettler: I object to him badgering the witness. He [fol. 158] has said three times he does not know.

The Witness: What, am I supposed to guess? I never worked in one of them. I never been paid by a house of 133. I never worked in one of their houses. I am a hotel and night club waiter, and I don't work in restaurants.

(Thereupon counsel argued to the Court.)

Q. Is there a wage scale for 133, for waiters?

A. For one meal; yes. For one meal it is $3, my friend. I don't happen to work in one, but I know that that is the wages of some restaurants that 133 has, for one meal.

Q. Do you know what the wage scale of 133 is for two meals, sir?

A. No, sir; I do not.

Mr. Sibley That is all.

Judge Gordon: Any further questions?

Mr. Gettler: What were you paid at the Latin Quarter?

The Witness: Twenty-five dollars and some cents a week—75 cents, I believe and every fourth week we got one extra day.

Mr. Gettler: For how many meals serving a day?

The Witness: One meal, sir—one shift.

Mr. Sibley: That is a night club; is it not?

[fol. 159] The Witness: Yes, sir.

Judge Gordon: Any further questions?

Mr. Gettler: No. Is it possible to work out a stipulation, with the exception of the other people testifying they are members of 255?

Mr. Sibley: Get the cards. We will work it out on the cards. Sure, just call your people in.

Judge Gordon: Let us get the stipulation in the record as to what you are stipulating on, so I will know.

Mr. Gettler: As I understand the stipulation, each of the individuals, whom we will name as soon as they (sic) called in, would if called testify in the same manner as the preceding witness, subject to the specific cards which will go in evidence, showing anything different, and with the one exception, these individuals would testify they are members of 255, and not members of Local 133.

Mr. Sibley: Well, whatever the card reflects.

Judge Floyd: The card does not reflect any membership.

Mr. Gettler: Is that stipulated to?

Mr. Sibley: I will agree to that with the understanding that is only this witness's testimony as to representation, and nothing else.

[fol. 160] Mr. Gettler: As to representation; as to walking out of their place of employment on April 17, 1955; as to participating in a strike election on May 25, 1955, and voting in favor of a strike; as to the designation of Local 255 as their bargaining representative, and as to walking out voluntarily, and with coercion.

Mr. Sibley: I will agree to that, subject to such changes in that testimony as may be reflected by the cards we will put in evidence.

Mr. Gettler: We will so stipulate. Please ask the people from the Sans Souci to come in and give their names.

> Antonio Romero, baker; Frances Beatson, maid; Margaret Barry, maid; Jane Baillies, maid; Remor Camp, maid; Louise Westman, maid; Clara Hoofer, maid; Cleo Hobbs, maid; Anna Luckenbach, maid; Anthony Fuentes, waiter; Vera Thomas, maid; Evangelo Thandrin, waiter; John Pettschau, houseman;——

Mr. Sibley: What do these show?

Mr. Gettler: These books, in looking at them, show these people to (sic) members of Local 255. For the record, if you want to show she was initiated March 1, 1954, Local 255.

Mr. Sibley: All right.

[fol. 161] Mr. Gettler: Cecil Brown, initiated March 1, 1954. His job is houseman.

Mr. Sibley: Fine.

Mr. Gettler: Lydia Lafuentes, maid; Ione Dill, maid; Jan Montgomery, maid; Orlando Saetta, bellman; and his book shows initiation in Local 255 as of September, 1954; Francisco Castels, main lobby porter; Anna Golma, maid; E. R. Santiago, porter, his book shows he was initiated April 29, 1955; Clarence Black, service elevator, his book shows he was initiated September 14, 1954 in Local 255; Teofilo Suclich; Stanley Wilk, waiter; Louis Cuayo, cook; Julio Maceo, busboy; Werner Meyer, waiter; Margaret Straight, maid; Michael Rusinal, barboy; Jerry Valfer, cook; Pablo Somora, busboy; Joseph Halfon, waiter; Antonio Perez, busboy; Raul Gonzales, kitchen man; Earsey Lee Barr, maid; Esther Beatson, chambermaid; Genesio Herrera, barboy; Alfred Bolon, bartender; David Chaf, busboy; Charles Schmid, waiter; Lena Glenna Humphrey, maid; Jan Belling, maid; Carlos Ferreti, dishwasher; Irving Hunsburger, service elevator; Augustine Beles, steward; Raymond Greenfield, cook; Elsie Yaeger, waitress; Antonio Franqui, dishwasher; Antonio Arocho, dishwasher; Justo Romero, busboy; Julio Echabal, dishwasher; Irving Magealin, waiter; Augusto Raimos, dishwasher; Pedro Guerra, busboy; Carl Crauil, houseman; Rufino Medina, coffee man.

Mr. Sibley How many have you got sitting in the back?

Mr. Gettler: How many people did we not find cards for? Stand up, please. Seven people.

Mr. Sibley: I will stipulate they would testify as the witness testified, whatever his name was, all the way.

Mr. Gettler: All right. Do you have here the cards?

Mr. Grusmark: There are 51.

[fol. 162] Mr. Gettler: Plus the seven in the back.

Judge Gordon: Fifty-one?

Mr. Gettler: Exclusive of the people that stood at the back.

Judge Gordon: I am going to do mine differently. These are UA-Sans Souci—union No. A, Sans Souci, and mark the ones for the plaintiff, if any, H, and so forth.

(The documents referred to were thereupon marked, "Defendants' Exhibit UA-Sans Souci.")

Mr. Gramling: At this time we would like to put on the stand a witness who comes out of continuity, let us say, your friend and mind, (sic) Mr. James H. Norton, president of the Presidents Council of Miami Beach, and who is under subpoena, and through the court I would like to apologize to him. He has been here since 10 o'clock and I just now learned it, and we certainly want to apologize for keeping him waiting all this time.

Judge Crawford: Before you call him we would like to have a 10 minute recess.

(Thereupon a short recess was taken, after which the following proceedings were had:)

Mr. Gramling: Mr. James Norton. I am sure you pre-
[fol. 163] viously heard our apology through the court.

Mr. Norton: Thank you, sir.

Judge Gordon: This will apply to all of them, not just one?

Mr. Gramling: That is right.

Thereupon—James H. Norton was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and address, Mr. Norton?

A. James H. Norton, 1213 14th Street, Miami Beach.

Q. That is in what city?

A. Miami Beach, Dade County.

Q. Do you hold an office on the Presidents Council of Miami Beach?

A. Yes; I do.

Q. What is the Presidents Council of Miami Beach?

A. Well, the Presidents Council is a civic organization composed of 29 other civic organizations. We have banded together for the betterment of our community.

Q. And your position with the Presidents Council is [fol. 164] what, Mr. Norton?

A. I have been president for the past year.

Q. And you were president on May 13, 1955; is that correct?

A. Yes, sir.

Q. At that time did the Presidents Council adopt a resolution in regard to the labor disputes on Miami Beach?

Mr. Sibley: I object to that on the ground it is immaterial and irrelevant.

(Thereupon counsel argued to the Court.)

Mr. Gettler: I ask you to reserve ruling until you see the relevancy, your Honor.

Judge Crawford: Let him testify.

The Witness: On May 12th, the Presidents Council passed a resolution.

By Mr. Gettler:

Q. I will hand you a copy of a document—a two-page document entitled, "Resolution Adopted by Executive Committee of Miami Beach Presidents Council on May 12, 1955," and ask you if that is the resolution which was adopted?

A. Yes; this is the resolution.

Mr. Gettler: I will ask this be marked as a defendants exhibit.

Judge Crawford: You just want it marked for identification?

[fol. 165] Mr. Gettler: Yes; at this time.

By Mr. Gettler:

Q. Now, was a copy of that resolution sent to each of the plaintiffs in these various actions? Now, the plaintiffs herein are the Sans Souci Hotel, the Roney Plaza Hotel,

the Algiers Hotel, the Sorrento Hotel, the Sherry Frontenac Hotel and the Monte Carlo Hotel.

Mr. Sibley: I object to the question upon the ground it is immaterial and irrelevant.

Judge Crawford: What was the date? Did you ask for the date and get it?

Mr. Gettler: This is May 12th, your Honors.

(Thereupon counsel argued to the Court.)

Judge Crawford: Speaking for the three judges, the court will allow the witness to testify and reserve ruling on the objection.

Mr. Sibley: Will your Honors consider I have made the same objection to all this phase of the testimony so we can save time?

Judge Crawford: You mean from the witness?

Mr. Sibley: Yes, sir; in reference to this witness, this business of peacemakers.

Judge Crawford: Objection as to materiality?

[fol. 166] Mr. Sibley: Materiality would be one of the objections, and they have not offered it yet, and I have never seen it. I do not know if I have additional objections.

Judge Crawford: If you do, perhaps you better state them as they arise.

Mr. Sibley: As they arise, but it will be considered I have an objection on the ground of materiality and relevance.

(Thereupon the pending question was read by the reporter as recorded above.)

The Witness: There were 12 copies delivered to the hotel association, not to the hotels individually.

By Mr. Gettler:

Q. Was a copy delivered to Local 255?

A. Yes; it was.

Q. Did you receive any reply from any of the hotels?

A. I received no reply.

Q. Did you receive any reply from Local 255?

A. Your Honor, I do not have the complete file here. I do not know whether a reply came or not.

Q. Did you receive a letter, do you recall, from Local 255?

A. No; I do not recall.

[fol. 167] Q. Did you receive any phone call from Mr. Herman?

A. Yes; I did.

Q. And will you tell us what that phone call was?

Mr. Sibley: I object to that upon the ground it would be a self-serving declaration; would not be binding upon the plaintiffs, and it is immaterial and irrelevant, and further on the ground it would be hearsay.

(Thereupon counsel argued to the Court.)

Mr. Gettler: Let me withdraw the question.

By Mr. Gettler:

Q. Mr. Norton, did Mr. Herman accept the offer contained in your resolution?

A. Well, in our resolution to Mr. Herman it was not requested that he be a member of the committee as stated in our resolution, but merely asked that he might help such a committee that would be ultimately formed, and the telephone call that I had received from Mr. Herman was to the effect he would be very glad to assist in any way possible.

Q. I will hand you a copy of a letter dated May 13, 1955, and ask you if that is your signature on the letter?

A. That is correct.

Q. Was that letter sent?

A. Yes.

[fol. 168] Q. And was an identical copy of the letter sent to the various hotels?

A. Not to the hotels. It was sent to the hotel association.

Mr. Gettler: I will offer the resolution and the letter sent to Hotel Employees Union, Local 255, into evidence at this time.

Mr. Sibley: We object upon the ground that the letter and the resolution are immaterial and irrelevant.

Mr. Warren: Your Honor, will you hear us before making a ruling?

Judge Crawford: It is the consensus of the three judges that we will reserve ruling on the motion subject to it being connected up by counsel for the union. For the time being this will be marked as A and B for identification, defendants.

(The documents referred to were thereupon marked, "Defendants' Exhibits A and B for identification," respectively.)

Mr. Gettler: I have no further questions of the witness.
Mr. Sibley: Come down, Mr. Norton.
Mr. Gettler: Miss Ruth Hyllested of the Roney Plaza.

[fol. 169]

Thereupon—RUTH HYLLESTED was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and address, please?
A. Ruth Hyllested, 440 Northeast 26th Street.
Q. Where was your last place of employment?
A. Roney Plaza.
Q. How long have you worked for the Roney Plaza?
A. I have been there—I have to stop and think. I started last April, I believe—it was 1954.
Q. That is a year and two months; is that right?
A. That's right.
Q. And what was your job at the Roney Plaza?
A. I was chief operator.
Q. On April 15th of 1955, did you join the general walkout of employees of the hotel?
A. I did, sir.
Q. Have you engaged in picketing at the hotel since that time?
A. Yes, sir.
Q. Has it been peaceful?
[fol. 170] A. Yes, sir.

Q. Did you walk out voluntarily, and of your own free will?

A. I did, sir.

Q. Did anyone coerce you or threaten you or in any way force you to walk out?

A. No, sir.

Q. Are you a member of Local 255?

A. I am.

Q. When did you join Local 255?

A. January, 1954.

Q. Is that 1955 or 1954?

A. 1954.

Q. Now, have you designated Local 255 as your collective bargaining agent to deal with your employer on all matters having to do with wages, hours or working conditions?

A. Yes, sir.

Q. I will hand you a card and ask you if that is your signature?

A. Yes; it is.

OFFER IN EVIDENCE

Mr. Gettler: I will offer this card into evidence.

Mr. Sibley: No objection.

Judge Gordon: UA-Roney is the exhibit number.

[fol. 171] (The document referred to was thereupon marked, "Defendants' Exhibit UA-Roney.")

By Mr. Gettler:

Q. When did you sign this authorization card?

A. Well, I don't know exactly. I would say it was at least 30 days before we walked out. I couldn't tell you exactly.

Q. Did you participate in a secret ballot strike election on May 25, 1955?

A. Is that the one at the hall? I can't remember.

Q. That is the one at the union hall.

A. Yes, sir; I did.

Q. Did you vote to strike?

A. I did, sir.

Q. Miss Hyllested, did you report various complaints

to the union which you wanted them to handle for you, or negotiate for you?

A. I have, several times.

Q. What were those complaints?

A. Well, I can't think right now. I am a little nervous, but there have been so many things that I don't know where to start. One thing was the salary of the girls, which I was trying to get. I was losing all my girls. I couldn't keep them. Eating conditions of the hotel, which I spoke several [fol. 172] times to the manager, which we paid for. And various girls were being laid off at the time when we needed them the most. There are many things that I can't go into right now. I can't remember.

Q. How many days a week were you required to work?

A. Six, but many times we had to work seven because we didn't have enough girls.

Q. Were you dissatisfied about your number of days off?

A. Well, I can't say. When business wasn't too bad and we had enough girls, we had six days, but there was always a shortage of girls so we usually had to work the seventh day.

Q. Were you dissatisfied with the arrangement where you had to work seven days quite often?

A. That's right. Now I am probably the first person at the Beach that ever fought for a six-day week down here, long before the union was ever heard of.

Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. How many young ladies work under you?

A. Seven, sir.

Q. Did you hire them?

[fol. 173] A. Yes, sir.

Q. You had the power to discharge them if they were not satisfactory?

A. That's right.

Mr. Sibley: That is all.

Redirect examination.

By Mr. Gettler:

Q. What were the wages of the telephone girls?
A. The last month they paid them $190. Up to that time they were paying them $188. I just got a $2 raise from Mr. Kirkly before Christmas.
Q. $190 a month?
A. Yes.
Q. How many hours a day?
A. Eight hours.
Q. Was overtime paid?
A. Well, if a regular girl worked overtime she was paid half of our days salary. She got $6. If she worked another half day she got $3. If I brought them in from outside I was allowed to pay them $10.
Q. Overtime pay was paid at straight time rate. They were not paid any time and a half rates?
A. That's right.

Mr. Gettler: That is all. Can we work out a stipulation [fol. 174] for the Roney Plaza people?

Mr. Sibley: That lady was part of management. She was apparently in charge of—she was in charge of people, and hired and fired them. Let us get a witness that is a normal witness.

Mr. Gettler: We consider her to be a very normal witness, but we will call another person if you so desire. Peter Mordasch.

Thereupon—Peter Mordasch was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and address, please?
A. Peter Mordasch, Westview Hotel, 923 West Avenue.
Q. What was your last place of employment?

A. Roney Plaza.
Q. What was your job?
A. Houseman.
Q. How long were you employed at the Roney Plaza?
A. Since November.
Q. Of 1954?
A. That's right.
[fol. 175] Q. Did you join in the general walkout which occurred to the Roney Plaza on April 15, 1955?
A. Yes.
Q. Did you do so voluntarily and of your own free will?
A. Yes, sir.
Q. Did anyone coerce or threaten or in any way force you to walk out?
A. No, sir.
Q. Have you been in the picket line?
A. Yes, sir.
Q. Has it been peaceful?
A. Yes, sir.
Q. Are you a member of Local 255?
A. Yes.
Q. When did you join Local 255?
A. April 8th.
Q. Of 1955?
A. Yes.
Q. I will hand you a card which designates Local 255 as the collective bargaining agent, and ask you if that is your signature?
A. Yes, sir.

Mr. Sibley: No objection.

[fol. 176] OFFER IN EVIDENCE

Mr. Gettler: I will offer this in evidence in the Roney Plaza case.
Judge Gordon: UB-Roney.

(The document referred to was thereupon marked, "Defendants' Exhibit UB-Roney.")

By Mr. Gettler:

Q. When did you sign that designation card?
A. On the same day when I got in the union.
Q. That is April 8, 1955?
A. Yes, sir.
Q. What were your hours, Mr. Mordasch?
A. I worked from 8 to 4.
Q. From 8 to 4?
A. That's right.
Q. And what was your pay?
A. $165 a month.
Q. How many days a week?
A. Well, for $165, for six days.
Q. Did you sometimes work a seventh day?
A. Well, for seven days they pay us an extra $5 for overtime.
Q. You got paid $5 for working a seventh day?
A. That $5 extra for that day.
Q. For the seventh day?
A. Yes.
[fol. 177] Q. You did not get any time and a half rate for the seventh day?
A. No, sir.
Q. Were you required to work on the seventh day on days when you did not wish to work?
A. Sir.
Q. Were you required to work on the seventh day sometimes when you did not want to work?
A. Yes, sir; they compell (sic) you to work. The last time I didn't want to work, but the head houseman said I have to work unless I wouldn't have no job.
Q. Did you designate Local 255 to try to improve your conditions?
A. Yes, sir; I did.
Q. On May 25, 1955, did you participate in a secret ballot strike election at union headquarters?
A. Yes.
Q. Did you vote to strike?
A. Yes, sir.

Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. Let me see your union card there, will you?
A. Yes, sir.
[fol. 178] Q. Now, the day that you got this union card, which is this little black book, that is the day you signed the card that he showed you—the other card?
A. Signed it when I got the book; yes.
Q. This card right here, that is the day you signed this card, the day you got the book?
A. Yes.
Q. You signed it the same day?
A. Same day; yes.
Q. You got $165 a month?
A. Yes, sir.
Q. As a doorman?
A. No; I was houseman.
Q. For six days a week?
A. That's right.
Q. Who is the man that told you you had to work when you did not want to work the seventh day?
A. Mr. Warren, the head houseman.
Q. Mr. Warren?
A. Yes.
Q. What is his first name?
A. I don't know. We called him Red.
Q. Red Warren?
A. Yes.
[fol. 179] Q. Did he go out on strike?
A. No.
Q. He did not?
A. No; he did not.

Mr. Sibley: That is all.
Mr. Gettler: Let me see the little book of yours.
The Witness: Yes.
Mr. Gettler: This little book shows that it is dated April 8, 1955; is that correct?
The Witness: Yes.

Mr. Gettler: That is all. Now do you want to work out a stipulation?

Mr. Sibley: I will stipulate on everything except Mr. Warren compelling all the rest of the witnesses working seven days a week.

Mr. Warren: Will you let the record show we are not related by affinity?

Mr. Sibley: Until you get the name of Mr. Warren, are you sure? We have not got his name yet.

Mr. Gettler: As I understand it, we will have a stipulation as we had previously. These other witnesses would testify the same as the last witness, except, as Mr. Sibley [fol. 180] says, to being required by Mr. Warren to work, and except as the designation card may show otherwise.

Mr. Sibley: Reflect a different date.

Mr. Gettler: That is right. Will you ask everyone from the Roney Plaza to come in, please? What is your name?

Anna Boudoin, maid; Frances Yankowitz, maid; Odell Hardman, housekeeper; Pearl Crowley, night maid; Sebastian Diaz, busboy; Condido Burgos, busboy; Antonio Caban, porter; Enrique Perez, waiter; Paul Alberts, waiter; Alicia Sole, salad pantry; Edward Herbel, engineer; Theodoro Fonseca, dishwasher; Josephine Walker, maid; Helen Whittle, maid; Andrew Brown, captain in dining room; George Bruley, bartender; Thomas Marin, busboy; Francois Scotto, pastry chef; Benny Cruz, cook; Angel Ocasio, kitchen; William Clicsu, assistant to maitre de; Anna Sutton, maid; Mary Collins, maid; Matilda Bickhafer, pantry woman; and her book shows membership on March 1, 1954; Henry Collins, cook; Monserrat Mejios, kitchen man; Paulino Obaz, potwasher; Lucas Burgos, busboy; Alexander Treguea, houseman; Jesus Feliciano; George Healy, houseman; Augustine Cardew, bakers helper; Frank Rosado, salad man; Marcel Adorono, officers waiter; Norbet Ruiz, captain room service; Joseph Hayden, waiter; Anthony Korunuas, bartender; George Chase, bartender; John Cossi, bellman; Douglas McPfee, waiter; Joseph Pastorino, cabana chef; Gary

Caribian; Miguel Rievera, kitchen; Herbert Perez, handyman; James Ramirez, service elevator; Maury Silverman, waiter; Meyer Levy, waiter; Albert Frank.

Mr. Gettler: We stipulate that Meyer Levy, if called, would testify as the proceeding (sic) witness.

Judge Gordon: You only had one that did not have [fol. 181] a card?

Mr. Gettler: That is right, your Honor.

Mr. Sibley: All right.

Mr. Barkdull: There are 47 cards, and one that did not have a card.

Judge Gordon: All of these will be marked, UC-Roney.

(The documents referred to were thereupon marked, "Defendants Exhibit UC-Roney.")

Mr. Gettler: According to my notes, your Honor, the only hotel we have not gone through in the same fashion is the Algiers, and my notes also show we did have one witness there, Mr. Robert Davis. If we could have a similar stipulation on that, Mr. Sibley.

Mr. Sibley: I would stipulate that the witnesses would testify as to representation as shown by their cards. I do not know what Davis said.

Judge Floyd: He was the one that testified there was a shop meeting at 4 o'clock on April 20th, on one shift.

Mr. Gramling: With the exception of that I have to note he testified first of all he was a member of 255.

Judge Floyd: A charter member.

[fol. 182] Mr. Gramling: And we of course have stipulated according to the times shown, and that charter members would not apply. He participated in the May 25th election; joined in the secret ballot on April 25th. He walked out voluntarily and under no compulsion, and that the picketing was peaceful.

Mr. Sibley: Well, I am willing to stipulate in regard to that, except with reference to being a charter member, and in reference to that alleged shop meeting at the union hall.

Mr. Gettler: I will admit that.

Mr. Sibley: And the secret ballot that allegedly con-

ducted at the union hall, and subject to the adjustment of the dates as shown by the cards; I will stipulate.

Judge Crawford: Well, the Algiers is one of the cases that I have, and I confess, I do not understand the stipulation.

Mr. Gramling: Would you undertake to state the stipulation so the judge will understand?

Judge Crawford: Since that is the first witness called, and some 16 witnesses ago, perhaps you better dictate the stipulation into the record that you could agree to, so everybody will understand.

[fol. 183] Mr. Gettler: If the witnesses whose names we will present to your Honors were called, they would each one testify that they have designated Hotel Employees Union, Local 255, as their collective bargaining agent; they have each requested the union to negotiate on their behalf with the employer on all matters dealing with wages, hours and conditions of employment. The witnesses would also testify that such designation was prior to the walkout on April 21, 1955, unless the cards which we will also present to your Honor show otherwise. Each witness would also testify that he or she left his employment as part of a general walkout on April 21, 1955 of their own free will and volition. There was no coercion; no force and no threats that caused them to walk out. Each of the witnesses would also testify they had engaged in picketing and such picketing has been peaceful. Each of the witnesses would also testify on May 25, 1955, he or she participated in a secret strike ballot, and that he or she each voted in favor of a strike.

Mr. Sibley: For the purpose of the hearing I will stipulate that each of the witnesses would so testify, subject to [fol. 184] modification that may be shown by the cards, as to dates of representation and the persons designated.

Judge Crawford: All right.

Mr. Gettler: Will you please ask for everyone from the Algiers?

Ethel Gottfried, housekeeping department; Theodore Rosenman, service department; Mary Gispert, maid; Augustine Villa, busboy; Malda Dauldi; Louis Pepper

man, cook; Bernard Negro, elevator operator; Hazel Roberg, maid; Catherine Cesa, maid; Charles Klein, houseman; Diego Orosa, kitchen; Alfredo Mora, busboy; Savarino Torres, kitchen; Louis Turi, cook; Victor Torres, storeroom clerk; Juan Salaz, kitchen; John Delafe, waiter; Manuel Crespo, kitchen; Harold Fales, waiter; Isabelo Bonilla, porter; Pedro Morales; Thomas Falcone, service captain in dining room; Gregorio Rivera, busboy; Fepifanio Monserrate, dishwasher; Raphael Anduyar, dishwasher; Carl Hyllsted, houseman; Helen Campo, waitress; Clare McKenna, waitress; Agapito Ayala, busboy; John Truffa, houseman; Rose Truffa, maid; Secero Rivera, dishwasher; Elizabeth Peterson, maid; Thomas Ramsey; houseman; Santos Ortiz, cooks helper; Mary Bucur, maid; Isaiss Delgado; Delores Cowart, maid; John Marks, Jr., soda fountain; Joseph Beninati, captain of waiters; Ernest Lachaite, captain of dining room; Eugene Perz, busboy; Cecilio Cruz; Jack Fairman, porter; Augustine Rivera, dishwasher; Stanley Cansagi, busboy; Ramon Anduyar, dishwasher; Suzy Rivera, maid; Cecil Dumas, maid; Mimi Ossa; Maude Alvarez, maid; Marguerite Onge, maid; Joseph Lemieus, houseman; Guiemmo Buchhorst, steward; Cristobal Literes.

Mr. Gettler: There are six individuals for whom we have no cards. Will you state your names?

Helen Camp, Diego Rosa, Isabelo Bonnila, Cecilio Cruz, Joseph Lemeuy and Guiemmo Buchhorst.

Mr. Gettler: Can you stipulate, Mr. Sibley, that if these six witnesses were called they would testify the same as [fol. 185] the preceding witness?

Mr. Sibley: Yes; in the matters of which we stipulated before.

Mr. Gettler: All right.

Mr. Barkdull: There are 51 total, and 21 duplicates.

Mr. Gramling: Your Honors, I wonder if we could announce through the court to those assembled here that we have no further purpose for them, and if Mr. Sibley has

no further purpose, they are permitted to leave or remain, as they may elect.

Judge Crawford: Any objection?

Mr. Sibley: I have not the slightest purpose for them, your Honor.

Judge Crawford: Any witnesses in the case are now free to leave or stay until court is recessed. If you wish to leave, please leave now.

This group of cards is marked B-Algiers.

(The documents referred to were thereupon marked, "Defendants' Exhibit B-Algiers.")

Mr. Gettler: Our next witness will be Mr. David Herman.

[fol. 186]

Thereupon—David Herman was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name, please?

A. David Herman.

Q. And your address?

A. Miami Beach, Florida.

Q. What is your occupation, Mr. Herman?

A. I am the director of organization for the Hotel Employees Union, Local No. 255.

Q. In such capacity have you obtained signatures to various cards designating Local 255 as collective bargaining representative for a number of employees?

A. Yes, sir; personally, and through people designated by me to get those cards.

Q. And is it your job to maintain possession of those cards?

A. Yes, sir.

Q. Are those cards the official records of the union?

A. Yes, sir; among others—in addition to others.

[fol. 187] Q. I will hand you a number of cards of em-

ployees of the Algiers Hotel and ask you if those designation cards are from the official records of the union?

A. They are, sir.

Q. Of which you have custody; is that correct?

A. Yes, sir.

Q. And were those obtained during the course of your occupation, Mr. Herman?

A. Yes, sir.

OFFERS IN EVIDENCE

Mr. Gettler: I will offer these in evidence.

Mr. Sibley: We object upon the ground they are not the best evidence and that the authenticity has not been established.

(Thereupon counsel argued to the Court.)

Judge Crawford: Objection overruled. They will be marked as Defendant's Exhibit C-Algiers.

(The documents referred to were thereupon marked, "Defendants' Exhibit C-Algiers.")

By Mr. Gettler:

Q. Mr. Herman, I hand you a number of cards—designation cards of employees of the Roney Plaza, and ask you of (sic) those cards are from the official records of Local 255?

A. Yes, sir; they are.

Q. And within your custody and charge?

A. Yes, sir; at all times.

[fol. 188] Mr. Gettler: I will offer these in evidence.

Mr. Sibley: Mr. Herman, how many people did you have out getting signatures on cards?

The Witness: It varied—sometimes three, sometimes 30. It varied from period to period, from day to day, from week to week, but directly responsible to me were two people who got those cards, including myself.

Mr. Sibley: Those two people had control of the 30 who went out to get the actual cards signed?

The Witness: No, sir; I had control of all the people. It varied from time to time. Mr. Sibley, let me explain to you how it is done. First, we have three girls in the office. At one time we had only one girl in the office. Then we had two, and as business improved we got three. And members would come in, or prospective members would come in to the office and sign cards. Some would come in groups to meetings over which I would preside, or some other organizer of the union would preside.

We would then and there distribute the cards; have the people sign them, and turn them back to us. Others would take the cards to the hotels as they went out, and would distribute the cards, and the people would either mail the [fol. 189] card back or bring them back, but in each instance every card that came back ultimately got into my hands personally; were kept on the file in my personal desk.

Mr. Sibley: Well, you personally do not know whether or not the card that is displayed to you now, signed by Edith Byerly, that it is her signature on that card?

The Witness: I have no reason to doubt that. It was given to me and represented to me.

Mr. Sibley: Do you know that is her signature?

The Witness: I see that it is; yes.

Mr. Sibley: Did you see her sign it?

The Witness: No, sir. I may or may not. I do not know whether she signed it in my presence or in the presence of one of the officers.

Mr. Sibley: Do you know the signature of Edith Byerly? Have you ever seen her sign her name?

The Witness: I may have, but I do not particularly single out this one person out of some 6,000 cards I have.

Mr. Sibley: You do not know whether or not Edith Byerly actually signed that card?

The Witness: I have every reason to believe she did.

[fol. 190] Mr. Sibley: I did not ask you about your belief. Answer my question. You do not know that card was signed by Edith Byerly, do you?

The Witness: To the extent it is possible for me to take the word of the people that work for me, and take their word for it. The person who signed that card had to identify herself to be Edith Byerly before the signature would

be accepted by the office girl or the organizer out in the field, or the meeting when they came in to attend. I have that much knowledge.

Mr. Sibley: You are relying upon what the people in the field and the lady in the office did in acquiring these signatures; is that correct?

The Witness: In addition to what I personally—that might have happened at a meeting where I was personally present.

Mr. Grambling: I object to this line of questioning for that it is improper in cross for this reason, specifically. The line of questioning is (sic) to whether or not this official of this organization knows whether each instrument was signed by each individual goes beyond the statute that makes admissible the records of a corporation or of a business con- [fol. 191] cern, or mercantile records. Now, settling that point, we move yet it is outside the scope of direct. It does not test the credibility of the witness and does not fulfill any of the functions of cross examination.

Judge Gordon: Overruled.

Mr. Sibley: I just want to establish in the record that the witness did not see these people sign their name, and did not know it was their signature.

Mr. Herman, do you recall a person by the name of Ramon Casares?

The Witness: Offhand, no, sir.

Mr. Sibley: Do you know whether or not that is the signature of Ramon Casares?

The Witness: Personally, I do not.

Mr. Sibley: That is true of all these cards?

The Witness: No, sir; it is true of many of those cards, but I do know many of the people personally. I have since gotten to know them, and I know many of them personally, and I would know them if I would see them.

Mr. Sibley: Would you know their signature?

The Witness: In some cases I would; yes, sir.

Mr. Sibley: Will you take this and identify the signatures [fol. 192] that you personally know?

The Witness: It would be very few, I must admit.

Mr. Sibley: All right.

Mr. Gramling: This is not proper qualification. He is

attempting to qualify the witness on the presentation of a specific item, and the court has already overruled his objection to it and found it admissible.

Mr. Sibley: We again object to the documents, the cards, on the ground that the authenticity of the documents have not been established.

(Thereupon counsel argued to the Court.)

Judge Gordon: Objection overruled. Let them be marked, UD-Roney.

(The documents referred to were thereupon marked, "Defendants' Exhibit UD-Roney.")

By Mr. Gettler:

Q. Mr. Herman, during the course of your duties as organizer for Local 255, did you collect a number of designation cards of Sans Souci Hotel employees?

A. Yes, sir; I did.

Q. Are those the cards?

A. Those are the cards.

Q. Were these collected in the regular course of your business?

[fol. 193] A. They were.

Mr. Gettler: I will offer these in evidence, your Honor.

Mr. Sibley: I object upon the ground that the authenticity of the cards and signatures have not been established.

Judge Gordon: Objection overruled. They will be marked UB-Sans Souci.

(The documents referred to were thereupon marked, "Defendants' Exhibit UB-Sans Souci.")

By Mr. Gettler:

Q. During the course of your duties as union organizer for Local 255 did you collect a number of designation cards of employees of the Sherry Frontenac Hotel?

A. I did.

Q. Are those the cards which you so collected?

A. Those are the cards.

Q. Were these collected in the normal course of business?

A. I did.

Mr. Gettler: I offer these in evidence.

Mr. Sibley: I object upon the ground the authenticity of the documents have not been established, and the authenticity of the signatures has not been established.

[fol. 194] Judge Floyd: When did the Sherry Frontenac walk out?

By Mr. Gettler:

Q. Mr. Herman, do you recall that offhand?

A. April 16th.

Judge Floyd: Objection overruled. I am going to let them in as a cumulative exhibit. I have examined most of them and it is apparent that 99.8 per cent of them are signed after the walkout.

Mr. Sibley: That is correct, sir.

Judge Floyd: That will be Defendants' Exhibit E-Sherry Frontenac.

(The documents referred to were thereupon marked, "Defendants' Exhibit E-Sherry Frontenac.")

By Mr. Gettler:

Q. Mr. Herman, during the course of your employment as organizer of Local 255, have you collected designation cards of employees of the Monte Carlo Hotel?

A. I did.

Q. I will hand you those cards and ask you if those are the designation cards you collected in ordinary course of business?

A. Yes; I did.

[fol. 195] Mr. Gettler: I will offer them in evidence at this time.

Mr. Sibley: Same objection.

Judge Crawford: Objection overruled. They will be marked, C-Monte Carlo.

(The documents referred to were thereupon marked, "Defendants' Exhibit C-Monte Carlo.")

Mr. Gettler: This is the last one, your Honors.

By Mr. Gettler:

Q. Mr. Herman, during the course of your duties as organizer of Local 255, did you collect designation cards of employees of the Sorrento Hotel?

A. I did.

Q. Are those the cards you collected during the ordinary course of business?

A. I did.

Mr. Gettler: I will offer these in evidence, your Honors.

Mr. Sibley: I make the same objection.

Judge Floyd: Same ruling. This will be Defendants' B-Sorrento.

(The documents referred to were thereupon marked, "Defendants' Exhibit B-Sorrento.")

By Mr. Gettler:

Q. Mr. Herman, what is the Miami Hotel Trades Coun-
[fol. 196] cil?

A. The Miami Hotel Trades Council is an organization of several local unions affiliated with the American Federation of Labor, who have jurisdiction over certain categories of hotel employees. Included among them are bartenders, waiters, cooks, maids, elevator operators, telephone operators, engineers, clerks, carpenters, painters—something that would run into about eight or ten craft unions of the American Federation of Labor.

In order to avoid any kind of jurisdictional dispute during the course of an organizing drive and after a contract is signed, these unions combine to form the Miami Hotel Trades Council, and after that happens the jurisdiction would be allotted to each one of the local unions that has claim over the jurisdiction in accordance with the rules of the American Federation of Labor.

Aside from these cards, the people who have signed those cards have also designated their respective local unions as collective bargaining agent, either by signing these application cards for membership in Local 255, or by applying for membership in their respective local unions, such

as the electrician or air-conditioning or painters, as the case may be.

Now, the Miami Hotel Trades Council was formed after the first walkouts were called, and the workers were requested to sign those cards after the walkout. The first [fol. 197] thing the workers did after the walkout was to come to the union hall and they were requested to sign those additional authorization cards so that the other craft unions —of the electricians, so Mr. Morgan of the electrical workers, and Mr. Meyers of the air-conditioning men, and the others, would not have any worry that somebody was going to usurp their jurisdiction. We asked the workers to sign these Miami Hotel Trades Council cards as assurance—which assures the central labor union—which assures them their jurisdictional claims will be protected.

Q. The Miami Hotel Trades Council cards which you refer to are the yellowish color cards which have been introduced in evidence?

A. Yes, sir; and they are in addition to the application for membership which indicates each local union as collective bargaining agent.

Q. By the signing of those cards do the individual persons revoke their designation of your local as their collective bargaining agent?

Mr. Sibley: I object on the ground it calls for a conclusion of the witness. Not only that, but a legal conclusion of the witness.

Judge Crawford: Objection sustained.

By Mr. Gettler:

Q. Mr. Herman, you referred to an application for mem- [fol. 198] bership?

A. Yes, sir.

Q. Has each individual whose signature is on the cards that have been introduced in evidence also signed an application for membership?

Mr. Sibley: I object on the ground that the application for membership is the best evidence.

Judge Crawford: I think your objection is premature.

Mr. Sibley: Did he not ask if they had signed the——

Mr. Gettler: Yes.

Judge Crawford: He merely asked him if they signed an application.

Mr. Sibley: All right.

By Mr. Gettler:

Q. Will you answer that, Mr. Herman?

A. No, sir. Employees whose membership in the Hotel and Restaurant Employees Union, Local 255, is beyond question of a future challenge by other unions of the American Federation of Labor all signed these application cards. That would refer to the workers in the culinary crafts, such as waiters, cooks, bartenders, kitchen workers; to the housekeeping department, and workers of that category. With respect to workers in other categories, such as [fol. 199] electricians, maintenance mechanics, telephone operators—in such instances they may or may not have signed an application for Local 255 because that membership would be subject to future claim by other local unions of the American Federation of Labor.

Q. What is the jurisdiction of Local 255?

Mr. Sibley: I object to that upon the ground the charter of the local is the best evidence of what the jurisdiction is.

(Thereupon counsel argued to the Court.)

Judge Crawford: Objection overruled.

The Witness: The jurisdiction of Local 255 is over such hotel employees as come within the categories of waiters, waitresses, busboys, captains, cooks, and all kitchen workers, bartenders, bar porters, all housekeeping workers, maids, housemen, night men, linen room, room services, etcetera; bellmen, and such administrative employees as telephone operators and people who do not come under the jurisdiction of the office employees union of the American Federation of Labor.

By Mr. Gettler:

Q. Do you know of your own knowledge whether those individual persons who work within the jurisdiction of

Local 255 who have signed yellow cards that have been [fol. 200] introduced in evidence, have also signed an application for membership in Local 255?

A. Yes, sir.

Q. Now, I will hand you a printed document entitled, "Application for Membership, Local 255," and ask you to ignore the part written in ink, and ask you if that is an exact copy of the application for membership which you state of your own personal knowledge, that each of these individuals has signed?

A. This is the standard form application which is issued by our national office in Cincinnatti, and it is required of every member upon application for membership.

Mr. Gettler: I will offer the application for membership in evidence.

Mr. Sibley: We object upon the ground it is immaterial and irrelevant, and that the individual application is the best evidence of who has signed the application.

(Thereupon counsel argued to the Court.)

Judge Crawford: We are in agreement that the best evidence to prove that certain persons signed applications would be the signed application itself. As to that part of the objection, it is sustained.

If this is offered merely as a form—what is the purpose [fol. 201] of the document, first?

Mr. Gramling: It is only a form, which is the form of application for membership. Now, I believe we need to go no further than judicial knowledge. I do believe that the court will take judicial knowledge of the fact when a person joins a union he fills in an application for membership.

Judge Crawford: We are satisfied that the best proof of a persons signing an application is to produce the signed application. If it is for the purpose of showing that these people all signed these, the objection will be sustained.

Mr. Gramling: Sir, you are right. In offering this form, this is not evidence that all members of the union signed this form—no, sir; that is not it. This is only offered as a form of application for membership.

(Thereupon counsel argued to the Court.)

Judge Crawford: The document is admitted with the stipulation that it is only the form that is purportedly used by the union. This is marked as Defendants' Exhibit D-Monte Carlo, with the notation that it applies, I suppose, in each case.

(The document referred to was thereupon marked, "De-
[fol. 202] fendants' Exhibit D-Monte Carlo.")

Mr. Gramling: In order not to confuse the record, we will try and supply you, before we leave here today, with additional copies if you want to mark one in each case.

Judge Crawford: I would suggest you withdraw this and submit a copy with nothing on it but the printed form.

Mr. Gramling: All right. We may have to send over to Miami Beach for six copies, and we ask the court to indulge us in the light of the time and circumstances, while we are the first to aver it would be much better to do it as you suggest.

Judge Crawford: The ruling has been submitted in the matter. You can submit the document at a later time.

Mr. Gramling: Thank you. We will do so.

Judge Gordon: With the understanding, by admitting this document in evidence we are not admitting in evidence any fact that all of the members designated by these cards have signed; only the fact that it is a form of application that is used by the union.

By Mr. Gettler:

Q. Mr. Herman, you set forth before the exact jurisdic-
[fol. 203] tion of Local 255. Will you tell the court exactly how many employees worked, if you know, immediately prior to the walkout—worked within the jurisdiction of Local 255, at the Sherry Frontenac?

Mr. Sibley: I object to that upon the ground that the applications of those who applied for membership would be the best evidence of who are members of the union on that date.

Mr. Gettler: I am afraid Mr. Sibley was not listening. I asked him the total number of people working within the jurisdiction; not the number of people that signed any cards.

Mr. Sibley: I object to it on the ground it is immaterial and irrelevant.

Judge Floyd: Overruled.

The Witness: To the best of my knowledge, in the Sherry Frontenac there are approximately 140 people under the jurisdiction of Local 255.

Judge Floyd: This is prior to the walkout?

The Witness: Yes, sir.

Judge Floyd: What was the date of the walkout?

The Witness: The date of the walkout in the Sherry Frontenac was April 16th.

By Mr. Gettler:

Q. If you know, Mr. Herman, immediately prior to the [fol. 204] walkout at the Roney Plaza on April 15th, how many individuals were working within the jurisdiction of Local 255?

Mr. Sibley: Same objection.

Judge Gordon: Same ruling.

The Witness: To the best of my knowledge, the number of people who were working under the jurisdiction of Local 255 was approximately 215.

By Mr. Gettler:

Q. If you know, Mr. Herman, how many individuals were working within the jurisdiction of Local 255 at the Sans Souci Hotel immediately prior to the walkout on April 16, 1955?

A. To the best of my knowledge the number of people working under the jurisdiction of Local 255 at the Sans Souci was approximately 180.

Q. Can you tell us how many individuals were working within the jurisdiction of Local 255 at the Algiers Hotel immediately prior to the walkout on April 21st?

A. Approximately 200.

Q. How many individuals were working within the jurisdiction of Local 255 at the Monte Carlo Hotel immediately prior to the walkout on April 13th?

A. Approximately 115 or 118—something like that.

Q. How many individuals were working within the juris-

diction of Local 255 at the Sorrento Hotel immediately [fol. 205] prior to the walkout on April 19, 1955?

A. Approximately 70 to 75.

Judge Floyd: Let me clarify a few things in my mind. These were people who did work that would come within the jurisdiction that the union ordinarily has cognizance of?

Mr. Gettler: That is correct. Those are the people who would be affected by the——

Judge Floyd: It does not mean they were members of the union at that time?

Mr. Gettler: That is right. As far as the number of individuals are concerned, we have the cards in evidence.

Judge Floyd: All right.

By Mr. Gettler:

Q. Do you know of your own knowledge, Mr. Herman, how many individuals were working at the Sherry Frontenac Hotel within the jurisdiction of your local union that had designated your local union as their collective bargaining agent immediately prior to the walkout at the Sherry Frontenac Hotel on April 16, 1955?

Mr. Sibley: I object to that upon the grounds the designations are in writing, or in evidence. They are the best [fol. 206] evidence of who, and their number, and when.

Judge Floyd: Overruled.

The Witness: There are approximately 120 people who had designated Local 255 as their collective bargaining agent prior to their walkout.

By Mr. Gettler:

Q. How many individuals at the Roney Plaz (sic) had designated Local 255 as their collective bargaining agent immediately prior to the walkout on April 15th? Let me amend that question. That is, persons within the jurisdiction of Local 255.

Mr. Sibley: Same objection.

Judge Gordon: I would like to find out, before I rule on the objection, where he got the information from—the

information that he is questioning for. Where did you obtain it from—these cards or from what source? Where are you giving this information as to the number that you have represented?

The Witness: From the cards and or applications for membership; books issued, and such other records as we have in the union—primarily cards and books issued. I might say that no book is issued to a member without this form application card being completed and all the information supplied. They are mandatory. Any member who has [fol. 207] a book, it has to be understood that the book would not have been issued unless that application card had been filled, because it requires names of beneficiary in the event of death benefit claims. It requires such other information as are benefits that grow from union membership.

Now, from these application cards, and the authorization cards in the absence of formal membership in the union, I came to the conclusion of the figures that I have.

Judge Crawford: Court will be at recess for about two minutes.

(Thereupon a short recess was had, after which the following proceedings were had:)

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Gordon: As far as the Roney Plaza case is concerned—that is the one testifying now, I am going to sustain the objection of counsel for this reason. It is obvious he is basing that on records that are not in evidence or not before the court. Therefore, the records would be the best evidence.

Judge Floyd: Insofar as this judge's prior ruling on the Sherry Frontenac testimony that the witness gave, that approximately 120 people designated Local 255 as their bargaining agent prior to the walkout, the court will reverse [fol. 208] on the ruling, and that answer will be stricken, and the objection will be sustained.

Mr. Gettler: May the answer remain as a proffer?

Judge Floyd: Yes.

Mr. Gettler: I would like to proffer the answer in the record as to the Roney Plaza.

Mr. Sibley: I think they are entitled to make a proffer. I would like counsel to make a proffer.

Mr. Gettler: I am not too sure myself. What would your answer be if you were permitted to answer?

The Witness: With respect to the Roney Plaza?

Mr. Gettler: Yes.

The Witness: Approximately 200.

Mr. Sibley: I move to strike the proffer on the ground the records are the best evidence.

Judge Gordon: You objected to the proffer?

Mr. Sibley: I did not object. I now move to strike the proffer.

Judge Gordon: I will grant the motion on my previous ruling.

Judge Crawford: It is almost 6 o'clock. This hearing will be recessed until 9 a. m. next Saturday morning.

(Thereupon the hearing was adjourned until Saturday, June 11, 1955, at 9 o'clock a. m.)

[fol. 211] Miami, Florida,

Transcript of Hearing—June 11, 1955

The above-entitled causes came on for further hearing before the Hon. Grady L. Crawford, Hon. J. Fritz Gordon and Hon. Robert L. Floyd, Judges of the above-styled Court, at the Courthouse, Miami, Florida, on Saturday, June 11, 1955, at 9 o'clock a.m., pursuant to adjournment on Saturday, June 4, 1955.

APPEARANCES:

Sibley & Davis, Esqs., Attorneys for plaintiffs, By: Marion E. Sibley, Esq., Darry A. Davis, Esq., Milton E. Grusmark, Esq., and Thomas H. Barkdull, Jr., Esq., Of counsel.

J. Carrington Gramling, Jr., Esq., Fuller Warren, Esq., Ben Gettler, Esq., and W. J. Brown, Esq., Attorneys for defendants.

Mr. Gramling: If your Honors please, last week by inadvertence, when we were scooping up these many cards, and after the decks were cleared, we found that we had these left over that were inadvertently omitted at the time we offered into evidence the cards that were received in evi-[fol. 212] dence that were predicated upon the testimony of Mr. Herman, that they came into his possession in the due course of the business of the Local. I have explained this to opposing counsel and find that they will concede the fact that these were just inadvertently omitted. Therefore, if I may, I offer this group of Sorrento cards in connection with the original batch of cards that were offered in evidence, and these are the Monte Carlo cards. I believe the Court will take judicial knowledge of them.

Judge Crawford: Is this a part of the exhibit—rather the last exhibit of cards pertaining to those people that the Union represented?

Mr. Gramling: Yes, sir.

Judge Crawford: And it is not the cards of the persons who were listed here one by one as we went through them?

Mr. Gramling: No, they were not.

Judge Crawford: It is true that it was submitted as an exhibit, but I believe it was over an objection.

Mr. Sibley: That's correct, and I would like to urge the same objection.

Judge Crawford: All right, we will make the same ruling [fol. 213] and make this a part of Monte Carlo's Exhibit D.

(The cards referred to were thereupon marked "Monte Carlo's Exhibit, Part II, D".)

Mr. Gramling: Gentlemen, to refresh the recollection of the Court, we have the testimony of the witnesses in the respective cases: The testimony of James Norton was in common with all six cases; so I have here one for each jurist; similarly that of Dave Herman. Then the testimony of Henry Poro in the Monte Carlo case. Pardon me if I don't recall offhand which Judge had that.

Judge Crawford: I had the Monte Carlo.

Mr. Gramling: Sherry Frontenac.

Judge Floyd: I have that.
Mr. Gramling: The Roney Plaza.
Judge Gordon: What is this all about?
Judge Crawford: That's a transcript of the testimony.
Mr. Gramling: The Sans Souci.
Judge Gordon: I have that.
Mr. Gramling: And Sorrento?
Judge Floyd: I had Sorrento.
Mr. Gramling: Does that take care of your two cases?
[fol. 214] Judge Crawford: No. The Algiers.
Mr. Gramling: Here it is. If your Honors please, this is given to the Court for its use in assistance, and I would request the privilege of regaining possession of it for use in connection with the record, if I may.
Judge Floyd: You want them back?
Mr. Gramling: Yes.
Mr. Sibley: What do you want back?
Judge Floyd: The testimony.
Mr. Sibley: I haven't seen it.
Mr. Gramling: I will use it for argument. I will give you a copy of it, but let me have it back for record completion purposes.
Mr. Gettler: I believe Mr. Herman was on the stand at the last session.
Mr. Sibley: May I suggest that the rule is still invoked. If you still have any witnesses present, why, they should be excluded.

Thereupon—David Herman, the witness on the witness stand at the hour of adjournment on June 4th, being recalled, testified further as follows:

[fol. 215] Direct examination—resumed.

By Mr. Gettler:

Q. Mr. Herman, at the close of the hearing last Saturday, you were asked certain questions in regard to the number of persons that Local 255 represented in the various plaintiff hotels, and at that time there was an objection. Now, you stated, however, that there were certain records

that are kept in your office in regard to applications for membership. Is that correct?

A. That's correct, sir.

Q. You are the director of organization for Local 255?

A. Yes, sir.

Q. And in that capacity are you in charge of keeping applications for membership in Hotel and Restaurant Employees' and Bartenders' International Union, Local 255?

A. Yes, sir.

Q. And is the Union to maintain possession of those applications?

A. Yes, sir.

Q. I will hand you applications of various persons working at the Algiers Hotel, and ask you if those are part of the official records of Local 255?

A. Yes, sir, they are. I caused them to be taken out of the records since last Saturday.

[fol. 216] Q. Do you know how many applications there are here?

A. No, sir. I didn't count them.

OFFERS IN EVIDENCE

Mr. Gettler: I will offer those applications into evidence at this time.

Mr. Sibley: May we take a look at them, your Honors?

Judge Crawford: Yes, sir.

Mr. Sibley: The plaintiff Algiers objects to the introduction of the documents upon the grounds that they are immaterial and irrelevant. The authenticity of the documents have not been established. The data contained in the applications is not binding upon the plaintiffs.

Mr. Gettler: Your Honors, I'd like to call your attention to two matters, particularly the matter that was heard at the close of the last hearing.

Judge Crawford: Is that with reference to the admissibility of these documents?

Mr. Gettler: Yes.

Judge Crawford: All right.

(Thereupon counsel argued to the Court.)

Exhibit E—excuse me. D-Algiers.

Judge Crawford: The objection is overruled. Marked

(The applications referred to were thereupon marked "Algiers Exhibit D".)

[fol. 217] By Mr. Gettler:

Q. Mr. Herman, in your capacity of directing organization for Local 255, have you obtained application for membership from employees of the Monte Carlo Hotel?

A. Yes.

Mr. Sibley: We will concede that Mr. Herman will identify those in the same fashion as the other in order to save time, and that he would testify the same.

Mr. Gettler: I offer these applications in evidence of the Monte Carlo Hotel.

Judge Crawford: Same objection?

Mr. Sibley: Same objection, but I'd like to look at them. Go ahead with your offer.

Mr. Gettler: I'd like to offer this set of applications in the Sans Souci case.

Mr. Sibley: I make the same objection.

Judge Crawford: Who has the Sans Souci?

Judge Gordon: I do.

Mr. Gettler: I would like to offer these applications in the Roney Plaza case.

Mr. Sibley: Same objection.

Judge Crawford: Same ruling.

Mr. Gettler: I will offer the same applications in the Sherry Frontenac.

Judge Floyd: Same ruling.

[fol. 218] Mr. Sibley: Same objection.

Judge Floyd: Defendants' E, Sherry Frontenac.

(The applications referred to were thereupon marked "Defendants' Exhibit E, Sherry Frontenac".)

Judge Gordon: Let me have the Roney Plaza and Sans Souci, and I will mark them.

Mr. Gettler: I offer this final set of applications in the Sorrento Hotel case.

Judge Floyd: That will be Defendants' Exhibit C, Sorrento.

(The applications referred to were thereupon marked "Defendants' Exhibit C, Sorrento".)

Mr. Sibley: Same objection. Here are the Monte Carlo ones. Who wishes to mark those?

Judge Crawford: Let the Clerk mark those Defendants' Exhibit E, Monte Carlo.

(The applications referred to were thereupon marked "Defendants' Exhibit E, Monte Carlo".)

Mr. Sibley: May we have a moment to inspect all these?

Judge Gordon: I will mark these U-C, Sans Souci, and U-C, Roney Plaza.

[fol. 219] (The applications referred to were thereupon marked "Defendants' Exhibit U-C, Sans Souci", and "Defendants' Exhibit U-C, Roney Plaza".)

Judge Gordon: I'd like to ask a question in regard to these. What is this date up at the top, 4-27, that I notice on most everyone. What does that date represent?

The Witness: That's the date when the applications are reported into the International Union, and the per capita tax is submitted through the International to perfect their initiation fee.

Judge Gordon: Where is the date whereby you can show us when these were signed, if any?

The Witness: The date on which these were signed is not indicated, sir. The only date that is indicated is the date on which, as I said before, the applications were submitted to the International Union and recorded as members. It might have been signed a month or two months or three months before. An application submitted is meaningless unless the money is paid and transmitted to the International for payment of the per capita tax of the International. In the course of recruiting members, they are meaningless unless accompanied by money, and the money in turn submitted to the International.

[fol. 220] By Mr. Gettler:

Q. Mr. Herman, do you know of your own knowledge how many individuals working at the Sans Souci Hotel,

within the jurisdiction of Local 255, had designated Local 255 as their collective bargaining agent prior to the walkout at the Sans Souci Hotel?

A. One hundred and forty-five.

Q. Now, do you know, Mr. Herman, of your own knowledge, how many individuals working at the Algiers Hotel, within the jurisdiction of Local 255, had designated Local 255 as their collective bargaining agent prior to the walkout at the Algiers Hotel?

A. Two hundred and five.

Q. How many individuals working at the Monte Carlo Hotel, within the jurisdiction of Local 255, had designated Local 255 as their collective bargaining agent prior to the walkout of the Monte Carlo Hotel?

A. One hundred and five.

Q. How many individuals working at the Sorrento Hotel, within the jurisdiction of Local 255, had designated Local 255 as their collective bargaining agent prior to the walkout at the Sorrento Hotel?

A. Sixty-eight.

Q. How many individuals working at the Sherry Frontenac Hotel, within the jurisdiction of Local 255, had desig-
[fol. 221] nated Local 255 as their collective bargaining agent prior to the walkout of the Sherry Frontenac?

A. One hundred and twenty.

Q. How many individuals working at the Roney Plaza Hotel, within the jurisdiction of Local 255, had designated Local 255 as their collective bargaining agent prior to the walkout at the Roney Plaza Hotel?

A. Two hundred and seven.

Mr. Gettler: What was the Sans Souci?

Mr. Gramling: A hundred and forty-five.

By Mr. Gettler:

Q. Mr. Herman, what is the Miami Beach Hotel Association?

Mr. Sibley: I object to that on the grounds it is chartered by the by-laws, and that's the best evidence of what it is.

Mr. Gettler: This is preliminary. I will tie it in to these cases. I am just identifying what it is.

Mr. Sibley: It calls for a conclusion.

Judge Crawford: Overruled.

The Witness: The Miami Beach Hotel Association is an organization of the hotels on Miami Beach.

By Mr. Gettler:

Q. Do you know of your own knowledge whether the six plaintiffs in this case are members of the Miami Beach Hotel Association?

[fol. 222] A. Yes, sir, I do.

Q. Are they members?

A. Yes, they are.

Q. Mr. Herman, did you contact the Miami Beach Hotel Association or a representative thereof as the bargaining agent for these six plaintiffs?

Mr. Sibley: I object to that on the ground it is immaterial and irrelevant.

Mr. Gettler: Your Honors, we are going into the background to how the negotiations as to when these things first started, how they first started and bring it right up to date up to the walkout to show that there were contacts.

Mr. Gramling: And why there were contacts.

Judge Crawford: We will allow the witness to answer the question as to when he approached them as a representative of Union 255; not as the bargaining agent. The objection to the question asked is sustained.

By Mr. Gettler:

Q. Will you answer the question as amended by Judge Crawford, Mr. Herman?

Mr. Sibley: I renew my objection.

Judge Crawford: Rephrase the question.

By Mr. Gettler:

Q. Mr. Herman, did you ever approach the Miami Beach Hotel Association as a representative of Local 255?

[fol. 223] A. Yes, sir, on several occasions.

Mr. Sibley: Wait just a minute. I object to the questions.

Mr. Gettler: Let me rephrase the question.

Mr. Sibley: Do you withdraw this question?
Mr. Gettler: Yes.

By Mr. Gettler:

Q. Mr. Herman, did you, as a representative of Local 255, ever approach the Miami Beach Hotel Association which was representing these six plaintiffs?

Mr. Sibley: I object to that upon the grounds it is irrelevant and immaterial and calls for a conclusion of the witness. It is not shown in evidence that the Association had the power in which to act, and, in fact, it did not, to represent these six hotels.

Mr. Gettler: I am asking him if he approached them in their capacity. Then I will go to ask why he approached them in that manner. Then we will bring in evidence to show that the Miami Beach Hotel Association actually represents these six plaintiffs.

Judge Crawford: We will allow the witness to answer subject to the Court's later ruling on the objection.

The Witness: I made several approaches and had a num- [fol. 224] ber of contacts in person, by telephone and in writing with the officers of the Miami Beach Hotel Association in my capacity as the representative of Local 255.

By Mr. Gettler:

Q. Were you advised——

Mr. Sibley: I move to strike the answer on the ground that it is a conclusion of the witness. It is immaterial and irrelevant and so vague and indefinite that it could not furnish any information.

Judge Crawford: Same ruling.

By Mr. Gettler:

Q. Were you advised by the officers of the Miami Beach Hotel Association that they were representing six plaintiff hotels?

Mr. Sibley: I object to that on the ground it is immaterial and irrelevant, and upon the ground that it seeks to establish an agency by the statement of the agent.

Judge Crawford: We will enter the same ruling to this general line of questioning.

Judge Gordon: We want it connected up, in other words. Until it is, we will just reserve the ruling until it is connected up.

By Mr. Gettler:

Q. The answer to the question, Mr. Herman?

A. Will you give me the question again, please?

[fol. 225] (The pending question was thereupon read by the Reporter as above recorded.)

A. Our discussion was of the nature that it was stated on a number of occasions during the course of our discussions that they were speaking on behalf of these and all other hotels that were involved.

Mr. Sibley: I move to strike the answer upon the same ground.

Judge Crawford: Same ruling.

By Mr. Gettler:

Q. Mr. Herman, who did you first contact in the Miami Beach Hotel Association?

A. I first contacted——

Mr. Sibley: Wait a minute. I object to the question on the ground it is immaterial and irrelevant.

Judge Crawford: Same ruling.

The Witness: I first contacted Mr. Sam Rifkin, who was at that time the executive president of the Hotel Association of Miami Beach.

By Mr. Gettler:

Q. When was that that you contacted Mr. Rifkin?

A. On or about March 3rd, 1955.

Q. Will you tell us what the substance of that conversation was with Mr. Rifkin?

Mr. Sibley: I object on the ground it is immaterial and irrelevant, and upon the ground that it is hearsay testi-

[fol. 226] mony, and on the ground that whatever was said by the parties would not be binding upon the plaintiffs.

Judge Crawford: Same ruling.

Mr. Gettler: Your Honor, could a continuing objection be given? It may expedite things.

Judge Crawford: He may object to each question asked, if he wishes.

Mr. Sibley: I don't care to delay the proceedings, but I want to be careful that every objection is made to this line of questioning which seems so far afield to me.

Judge Crawford: Go ahead.

By Mr. Gettler:

Q. The answer to the question, Mr. Herman?

A. Will the Reporter repeat the question. I don't remember it.

(The pending question was thereupon read by the Reporter as above recorded.)

A. I telephoned Mr. Rifkin and announced my name and told him that I would like to see him. This was shortly following the publication of the first newspaper by Local 255 in which the——

Mr. Sibley: I object upon the grounds that the newspaper, if admissible at all, would be the best evidence, and [fol. 227] upon the further ground the newspaper is not admissible.

Mr. Gettler: Your Honor, Mr. Herman is not making any statement as to what the newspaper is stating or the truth of it. He is stating why he called.

Judge Crawford: Go ahead.

The Witness: After the distribution of the first issue of the hotel employees announcing the drive to organize the hotel employees for the purpose of improving their economic conditions, I called Mr. Rifkin and suggested that it would be advisable for us to meet. He invited me over to his office, and I went there about a half hour after our telephone conversation.

I was in conversation with Mr. Rifkin for approximately forty-five minutes or one hour where we discussed the union-

ization of the employees, the efforts to improve their conditions, and the sum and substance of the discussion was a suggestion by me to Mr. Rifkin that he discuss with the principals involved, the members of the board of directors of the Hotel Association, and the owners of the hotels involved, the advisability of a conference for purposes of working out an orderly procedure whereby the Union would be able to establish its right to bargain collectively on [fol. 228] behalf of its members based upon a secret vote, and, in general, I outlined and reviewed for Mr. Rifkin the procedures which exist in New York City with the Hotel Association.

Mr. Rifkin indicated that he was very familiar with what procedures there were in New York and in other cities, and without arriving at any specific conclusion there, other than that he would try during the course of the next few days to bring about a meeting between himself and such other colleagues as I would care to involve on behalf of the Union, and a representative committee from the Hotel Association.

I made it clear to Mr. Rifkin that the level of business discussion was such that we wouldn't want to confer with personnel on the managerial level, but that we would prefer to confer with principals who would be in a position to make decisions and to discuss problems with authority, rather than to act in the capacity of listeners and have to go back for every principal question that's raised. This was the nature of our discussion. This is the way we left it to a subsequent meeting.

[fol. 229] By Mr. Gettler:

Q. Mr. Herman, you mentioned the board of directors of the Miami Beach Hotel Association. Do you know of your own knowledge whether these six plaintiff hotels are on the board of directors of the Miami Beach Hotel Association?

A. Some of them are.

Q. Which ones?

Mr. Sibley: I object to that on the grounds that the minutes of the meeting, the directors of the stockholders, or members of the Hotel Association, would be the best evi-

dence of who they directed. It is obvious this witness could have no personal knowledge about these witnesses.

Mr. Gettler: I asked if he had any of his own knowledge, and he said he had.

Judge Crawford: Same ruling. Answer the question.

The Witness: Mr. Ben Kline, who is the managing director of the Monte Carlo Hotel, which is involved here——

Mr. Sibley: I will ask the witness if he is reading from a pad instead of telling from his own knowledge.

The Witness: I am reading, sir, from the official publication of the Miami Beach Hotel Association, where I got [fol. 230] my information.

Mr. Sibley: I object on the ground that the witness has now stated he has no personal knowledge.

Judge Crawford: Same ruling.

The Witness: Mr. Ben Kline, who is managing director of the Monte Carlo Hotel, is a member of the board of directors of the Miami Beach Hotel Association. Mr. Morris Lansburg, who is the owner or one of the owners of the Sherry Frontenac and Sans Souci Hotels, is a member of the Miami Beach Hotel Association Board of Directors. Mr. Charles Posener, who is owner or part owner of the Algiers Hotel, is a member of the Miami Beach Hotel Association Board of Directors. These individuals directly involved in the six hotels were, to my knowledge, members of the Miami Beach Hotel Association Board of Directors.

By Mr. Gettler:

Q. Did you have another meeting later with Mr. Rifkin or any other officers of the Miami Beach Hotel Association?

A. I had another meeting with Mr. Rifkin, and I also had two meetings with the president of the Miami Beach Hotel Association, Mr. Saul Cohen.

Q. When did you next meet with Mr. Rifkin?

A. I next met with Mr. Rifkin——

[fol. 231] Mr. Sibley: I want to urge the same objection. It is irrelevant, immaterial and hearsay testimony; not binding upon the plaintiffs.

Judge Crawford: Same ruling.

The Witness: I next met with Mr. Rifkin two or three days after the first meeting, which would be about the 6th or 7th of March, 1955.

By Mr. Gettler:

Q. What was the substance of that meeting?

A. The substance of that meeting was that Mr. Rifkin said that after giving the matter some thought that I had discussed with him at the previous meeting, and in discussing it with a number of his colleagues in the Hotel Association that events were developing in such a nature that he was withdrawing from the executive presidency of the Hotel Association, and he felt that it would be improper for him to pursue this matter, and suggested that I take it up with the president of the Hotel Association, Mr. Saul Cohen where he, Mr. Rifkin, would leave off, because Mr. Rifkin was going to resign. He said it hadn't yet been issued to the paper, and he would like for us to keep it in confidence. "As executive president, I am going to go into managing a hotel, and from there on you take it up with Saul Cohen", who was the president.

Q. Did you take it up with Saul Cohen, and what oc-
[fol. 232] curred and when?

A. Yes. I took it up with Saul Cohen. I had two meetings with Mr. Saul Cohen, the president of the Miami Beach Hotel Association. Those meetings took place on March 20th and 23rd.

Q. What occurred?

Mr. Sibley: I make the same objection, your Honor.

Judge Crawford: Same ruling.

The Witness: On March 20th—I believe it was on a Sunday—I know it was a Sunday—I met with Mr. Saul Cohen in the cabana at the Casa Blanca Hotel. After we were introduced, we started a discussion about the problem of unionizing the hotel employees, of improving their standards and increasing their wages, reducing their hours and matters of that nature. It was a general discussion.

Mr. Saul Cohen was pressed for time. He explained that one of his associates, who had a travel agency in New York City, was visiting with him that day, and it was very un-

fortunate that he couldn't spend any more time with me that Sunday, but would I come back the next day or the day after when he had more time, and we could discuss the [fol. 233] entire problem at greater leisure, and he wouldn't have to rush off. This is the nature of the conversation. It was general in character, and we shook hands and parted, and Mr. Cohen left, as he explained, to take his partner to the airport, and I left shortly thereafter.

I then met again with Mr. Cohen on March 23rd. I telephoned him and made an appointment and came over to the Casa Blanca Hotel at about 9:30 or a quarter to ten in the morning. We talked until about 11:30 or quarter to twelve. The conversation was of approximately two hours.

During the course of the conversation we covered the entire ground of the problem that existed with respect to the relationship between the employees and the employers in the Miami Beach hotels. I pointed out to them the low wages, long hours and other unfavorable conditions compared with conditions that existed in other hotel centers where our members are employed, made comparisons with New York, Chicago, Detroit, San Francisco, St. Louis and Cincinnati, without going into specifics.

It was generally agreed that the standards here are considerably lower than the ones we were able to point to up north, and for the very obvious reason that in the [fol. 234] other areas the hotel workers are unionized, and here they are not. I then discussed with Mr. Cohen the method and procedure for bringing about an improvement in the condition of the workers, and suggested that the best way would be the tested way, the way it was done in New York City where over a period of seventeen years the hotel employees have become unionized and have, through a process of orderly collective bargaining, improved their conditions three hundred-fold since the union started in 1937.

I pointed out to Mr. Cohen that in New York City, although the hotel industry from the point of view of numbers of employees and numbers of rooms is equivalent to Miami Beach; that there has not been a serious strike or stoppage or an interruption of work in New York City in all of the time that the Union has been organized, and that.

on the contrary, the hotel industry in New York City was prospering simultaneously with the improvement of the condition of the hotel employees.

I pointed out the health measures that were taken, the hospitalization, and just then we had established a pension plan in New York City for the hotel employees where they were receiving and still are receiving forty dollars a month [fol. 235] in addition to Social Security, and I suggested to Mr. Cohen this would be the ideal way of doing it, outlining to him precisely how it was done; that in any hotel where the Union claimed that a majority was had that there was a machinery for establishing the Union's claim by the existence of an impartial arbitrator, the Hon. Edward P. Marooney, who was former Police Commissioner of New York City, and whenever the Union makes a claim and it represents the majority of the employees, he investigates that claim, tests it either by a secret ballot, by a signature comparison or by oral testimony, whichever method he prefers to use.

We discussed that and suggested that that would be reasonable and intelligent and civilized method of doing it here in Miami Beach. Mr. Cohen's reaction was—he said, "You know, I can't disagree with anything you say, but I wish we had hotel owners here in Miami Beach. We have pants pressers. We have dressmakers. We have everything but hotel owners, and if I come to them with any kind of a proposition like that, they will think I'm crazy. They will think I am working for the Union instead of being the president of the Hotel Association. I have nobody to work." [fol. 236] "All right. Look, get a few people together. Get together the leading members of the Hotel Association, and let's sit down and outline the program to them before we get into a big knock-down and drag-out fight from which nobody will benefit. What benefit will it be to the workers? What benefit will it be to the employers or the community as a whole if we have to be pressed into the position of calling strikes and stoppages and lockouts and lockins. Let's see if we can do this thing reasonably and logically. We have a background of responsibility."

He said, "No, I don't think it will work out that way." "But, Saul, if it goes that way, you're going to get hurt.

The hotels are going to get hurt. You can't avoid it." He said, "If we get hurt, we'll call a doctor." I remember his exact words. I said, "Well, Saul, I hope that you know the right doctor. Maybe you'll call a quack, and instead of getting better you'll get worse." So Saul said, "That remains to be seen." I said, "Look——"

Judge Floyd: You're referring to Dr. Sibley?

The Witness: I wasn't talking about a lawyer, sir. I was talking about a doctor. I said, "Look, let's make a stab at it. [fol. 237] I am going to write you a letter and ask you officially for a conference, and then you'll have to reply officially, and based upon your official reply I will know how to proceed." He said, "Don't write me a letter, because if you do that you'll be putting me on the spot, and I don't want to be put on the spot." He said, "If you're going to write any letters, you write the letter to the Association's secretary, to somebody there that's going to read it, and if I preside at the meeting and the letter is brought up, then I will be in a position to act judiciously without having to come in myself and say, 'I got a letter from Herman.'"

By Mr. Gettler:

Q. During the course of that meeting——

Mr. Sibley: I move to strike that entire harangue on the ground it is immaterial and irrelevant, and upon the grounds it is not binding upon the plaintiffs.

Judge Crawford: Same ruling.

By Mr. Gettler:

Q. During the course of that meeting, Mr. Herman, did Mr. Saul Cohen make it clear to you that he was speaking on behalf, specifically, of these six plaintiff hotels—the Roney Plaza, Algiers, Sans Souci, Monte Carlo, Sherry Frontenac?

Mr. Sibley: I object to that on the ground it is immaterial.

[fol. 238] Mr. Gettler: And Sorrento.

Mr. Sibley: And that it would not be binding upon the plaintiffs. The proper method of proving agency is nonexistent.

Judge Crawford: Same ruling.

The Witness: Mr. Cohen and I discussed all of the hotels in the Miami Beach Hotel Association and in the general area, including the six that are involved here. Some were specifically named; others were not.

By Mr. Gettler:

Q. What were you advised as to his position and representation of those hotels?

Mr. Sibley: I object to that on the grounds that it is immaterial, irrelevant and calls for hearsay testimony and not proper.

Judge Crawford: Same ruling.

The Witness: Mr. Cohen during the entire conversation spoke authoritatively, intelligently and expertly on behalf of the hotels in the Miami Beach Hotel Association.

By Mr. Gettler:

Q. During the course of that last meeting with Mr. Cohen, was there any discussion in regard to the representation by Local 255 of employees of these six plaintiff hotels?

Mr Sibley: Pardon me. I didn't get that question.

[fol. 239] (The pending question was thereupon read by the Reporter as above recorded.)

Mr. Sibley: I object to that upon the ground it is immaterial and irrelevant and not binding upon the plaintiff.

Judge Crawford: Same ruling.

The Witness: With respect to these six and other hotels, including the Casa Blanca, Saxony—we discussed every hotel on Miami Beach.

By Mr. Gettler:

Q. What was your exact discussion in regard to the representation by Local 255 of employees of the hotels?

A. I advised Mr. Cohen and Mr. Cohen admitted that the Union represented a substantial number in each of these hotels. I claimed a majority, but I didn't press it. I said,

"We are willing to test the majority by submitting to an election card comparison or whichever way you want to do it", and this was my representation to him. He didn't question it. He did on one occasion say, "Do you have to do it that way? Do you have to put out such literature that the people are going to become so aroused about the low wages they are getting compared to the high prices charged?" He said, "Isn't there any other way to do it?"

I said, "Yes. I'm willing to do it anyway you want to, but let's sit down and discuss it. I claim a majority in [fol. 240] a good many of the hotels including the Casa Blanca." He said, "Let's test it out. We'll vote each hotel individually and see whether the Union does or does not represent a majority."

Q. Were these six hotels named during the course of this conversation?

A. Specifically I know of four of the hotels that were named, generally.

Q. Which were those four?

A. The four were the Sans Souci, the Monte Carlo, the Algiers and the Roney Plaza. We discussed specifically, but generally we discussed all the hotels.

Q. Did Mr. Cohen make any specific statement in regard to representation by Local 255 of the employees of the hotel?

Mr. Sibley: I object to that on the grounds it is immaterial and irrelevant and hearsay testimony and not binding upon the plaintiffs.

Judge Crawford: Same ruling.

The Witness: Mr. Cohen didn't challenge that. We discussed the method of proving our claim. He didn't deny it. He didn't challenge it.

By Mr. Gettler:

Q. Did Mr. Cohen express any doubt that Local 255 represented some of the employees in each hotel?

[fol. 241] Mr. Sibley: I object to that on the grounds it is immaterial and irrelevant and hearsay testimony.

Judge Crawford: Same ruling.

Mr. Sibley: It is not binding upon the plaintiffs.

The Witness: None whatsoever. The question that we discussed was as to the method of negotiating an agreement. We even discussed the question of a wage increase and what the effect of it would be, and Mr. Cohen said that the wage part of the hotel costs are minimal.

By Mr. Gettler:

Q. Did Mr. Cohen accept your statement that you represented some employees in each of these hotels as true?

Mr. Sibley: I object to that on the grounds it calls for a conclusion. It is immaterial and irrelevant and hearsay testimony.

Judge Crawford: Objection sustained.

Mr. Sibley: We are getting so far afield now.

By Mr. Gettler:

Q. Did you write a letter to the Miami Beach Hotel Association?

A. I did.

Q. Is this an exact copy of that letter?

A. Yes, sir, it is.

Mr. Sibley: That's the one we already admitted in evidence at the first hearing.

[fol. 242] Mr. Gettler: I don't recall if this is in evidence or not.

Mr. Sibley: Yes, it is. It went to the Supreme Court.

Mr. Gettler: In order to keep the record clear, we offer it again.

Mr. Sibley: I object on the ground it is in the record already and already been considered by the Supreme Court of Florida. It was put in evidence by them, and at that time this point was argued. It is immaterial and irrelevant and cluttering up the record.

Mr. Gettler: Your Honors, we had not put anything in evidence which has been before the Supreme Court of Florida. We were not on our case at that time.

Mr. Sibley: I beg your pardon. I consented to that letter going in evidence.

Judge Crawford: If counsel for the plaintiffs admits that the letter is in evidence, there's no need to introduce it twice.

Mr. Sibley: I do.

Mr. Warren: Could we read it in so we'll have it in this transcript, your Honors?

Mr. Gettler: I'd like to read it.

[fol. 243] Mr. Sibley: We'll argue it.

Judge Crawford: There is no use to put it in the record twice, counsel.

By Mr. Gettler:

Q. Did you receive any reply to this letter of March 30, 1955?

A. No, sir.

Q. Did you ever contact the Association and ask about a reply?

A. Yes, sir.

Q. When was that done?

A. I called Mr. Leon McAskill on April 9th.

Q. Who is Mr. Leon McAskill?

A. Mr. Leon McAskill is the executive director of the Hotel Association. He was designated to succeed Mr. Sam Rifkin.

Q. Did you ask him what happened to the reply?

A. Yes, I asked them why they hadn't replied to our letter.

Q. And what did you learn?

A. Well, he said nobody told him to reply.

Q. Was a copy of this letter of March 30, 1955, sent to any of these plaintiff hotels?

A. Yes, sir. A copy of the letter was sent to the members of the board of directors of the Hotel Association who were also the owners and/or operators of these hotels; namely, [fol. 244] Mr. Morris Lansburg for the Sans Souci, and the Sherry Frontenac; Mr. Ben Kline for the Monte Carlo; Mr. Charles Posener for the Algiers. They received copies of the letters along with all other hotel owners who are on the board of directors of the Association.

Q. Following that conversation of April 9, 1955, did you do anything to call the matter of your request contained in the letter of March 30, 1955 to the attention of these plaintiff hotel owners?

A. I ran an advertisement in the daily press and all the three newspapers.

Mr. Sibley: I object to that on the grounds it is immaterial and irrelevant and not binding upon any of the plaintiffs.

Judge Crawford: The ruling will be reserved.

The Witness: I ran a newspaper ad in the public press in all three major newspapers in the area—the Herald, News and the Miami Beach Sun.

By Mr. Gettler:

Q. What date was that ad run?

A. That ad was run on the 10th of April.

Mr. Sibley: We object on the grounds it is immaterial and irrelevant and binding upon the plaintiffs and is the same letter which has already been introduced in evidence.

Judge Crawford: Mark it for identification subject to the [fol. 245] Court's later ruling on the objection.

(The newspaper ad referred to was thereupon marked "Defendants' Exhibit CC for Identification".)

Mr. Gramling: Did that exhibit go to Tallahassee?

Mr. Sibley: Photostats.

Mr. Gramling: Where are the originals then?

Mr. Sibley: They would probably be filed under the number of the Saxony case.

Mr. Gramling: They are still in the Clerk's office?

Mr. Sibley: Yes. Judge Carroll would not permit the originals to leave; so we sent the photostats up.

Mr. Gramling: I am wondering if the Clerk's office is open, or is there some way of getting into the Clerk's office, because there is another file that I would like to pick up, also.

Judge Crawford: You can get it at the first recess, counsel.

By Mr. Gettler:

Q. Mr. Herman, was the fact of the failure of the plaintiff hotel to reply in any way to your request to negotiate reported to your members?

A. Yes, sir.

[fol. 246] Q. When was that done?

Mr. Sibley: I object to that on the grounds it is immaterial and irrelevant what he did with his own members. It is not binding upon the plaintiff.

Mr. Gettler: This is preliminary to show what happened before the walkout.

Judge Crawford: Read the question.

(Thereupon the pending question and the answer thereto were read by the Reporter as above reported.)

Mr. Gettler: The question was, "When was that done?"

Judge Crawford: We will reserve ruling on it.

By Mr. Gettler:

Q. When was that done?

A. That was done at a meeting, April 12th, 1955.

Q. And what occurred as a result of that?

A. The meeting voted to give full power to the officers to take whatever action they saw might in order to induce the hotels to sit down and negotiate with the Union.

Q. What action was taken?

A. On the 13th of April, the next day, the workers in the Monte Carlo and Saxony Hotel, instead of going in to work established picket lines and demonstrated their protest against the refusal of the management to negotiate with [fol. 247] them on their wages and working conditions.

Q. Now, after the picket line was established at the Monte Carlo Hotel, did you contact any of these other plaintiff hotels?

A. Yes, sir.

Q. Which ones?

A. I sent a telegram to the Roney Plaza and to the Sorrento.

Q. When did you do that?

A. On the 13th of April.

Q. Approximately what time?

A. Approximately 9:30, 10 o'clock in the morning.

Q. Did you receive any response at all from anyone at the Sorrento Hotel?

A. I received a telephone call from New York City from a Mr. Solomon who said that he represented the Sorrento Hotel, and that he was coming down to Miami Beach on Sunday and would I please hold off doing anything with respect to the Sorrento Hotel until he gets here on Sunday so that he could discuss it with me.

Q. Did you hold off?

A. No, sir.

Q. What then occurred?

A. I then called Mr. Friedman.

Q. Who is Mr. Friedman?

[fol. 248] A. I called Mr. Friedman at the Sorrento Hotel, tried to reach him, talked with him, asked him if he was willing to sit down and discuss the claim of the Union to a majority representation of the employees, told him about a telephone call from Mr. Solomon, and he said, "For purposes of this thing, Mr. Solomon does not represent me, and, as far as I'm concerned, I can't sit down and discuss it with you. There is nothing I would rather do, but I am unable to talk with you. I'm part of an Association, and whatever they do, that's what I'm going to have to do.

I subsequently received a telephone call again from New York from Mr. Solomon who confirmed that for purposes of this problem he was not going to represent Mr. Friedman, and that whatever happens will have to happen in Miami Beach between Mr. Friedman and the Union.

Q. Mr. Friedman told you that he couldn't negotiate with you; is that correct?

A. That's correct; that's right.

Q. What reason did he give you?

A. He said, "I'm part of the hotel group, part of the hotel association, and I'll do whatever they do."

Q. Was he referring to the Miami Beach Hotel Association?

A. Yes.

Q. What occurred then after the discussion with Mr. [fol. 249] Friedman?

A. I reported the matter to the workers.

Q. What happened?

A. The employer refused to negotiate. The employer refused to sit down and talk with them. They walked off the

job and established picket lines, and they picketed until they were enjoined.

Q. When did that picketing start?

A. The picketing at the Sorrento Hotel started on April 19th.

Q. Now, I believe you also sent the telegram at 9:30 or at 10 on the morning of the 13th to the Roney Plaza?

A. That I did.

Q. What occurred in response to that telegram?

A. In response to the telegram that I sent to Mr. J. Meyer Schine at the Roney Plaza, I had a number of conversations with Mr. Dolan.

Q. Who is Mr. Dolan?

A. Mr. Dolan is the manager of the Roney Plaza Hotel. I don't know his official title. He had something to do with the McAllister Hotel, too. I think he represents Mr. Schine's interest in this area generally, but he was at that time the manager of the Roney Plaza Hotel, and I might have had two or three telephone conversation with him which culminated in a face to face meeting on the evening of April [fol. 250] 14th, the day before the Roney Plaza walkout.

Q. What occurred at that meeting?

A. At that meeting, which was held in the Roney Plaza in Mr. Dolan's office, I asked him why he (sic) had not received any kind of acknowledgment of our telegram to Mr. Schine, and why the workers were being ignored in their request for negotiation, and for a sincere effort to improve their conditions.

Mr. Dolan said that Mr. Schine was not in town, and that he doesn't know where to reach him or how to reach him. I said, "Now, look. You have had this telegram on your desk for two days. I sent it on the 13th early in the morning. You had it there the 13th and 14th. This is 10:30 on the night of the 14th, and I am rather reluctant to be so gullible to believe that a telegram addressed to Mr. Schine would remain on his desk unopened for forty-eight hours without him being advised of it; at least he would tell his secretary to open up the telegram and see what's in it."

I said, "It is inconceivable that a business man, a responsible business man would leave a telegram unopened on his desk. Maybe it has something to do with a million dollar

deal in some other part of the country. Maybe it is a personal matter involving his son in the army. Maybe it has something to do with Roy Cohen. You can't leave telegrams like that around. Don't ask me to believe it."

[fol. 251] "My hands are tied," he said. "I can't tell you anything about it, Mr. Herman. We tried to locate Mr. Schine. He was grounded in Washington and now we think he is in Buffalo, and it is foggy in Buffalo." I said, "Well, it seems to be pretty foggy here in Miami Beach, as far as you're concerned. Now, if you can't give me a specific answer as to what your intentions are with respect to the wishes of these employees, I am going to have to report this matter to your employees, and they will act in what they think will be the best manner to protect their interest."

"Mr. Herman, my hands are tied. I can't tell you anything." I said, "Mr. Dolan, I have reason to believe that you did talk to Mr. Schine. We have information that there were conversations." "Mr. Herman, I can't tell you anything. My hands are tied."

By that time he was getting a little tongue-tied. He said, "All right, if that's the way you feel about it." We shook hands, went out. "Goodnite." "Goodnite." I reported it to the committee of the Roney Plaza Hotel. They were very resentful of being treated in that manner having an employer ignore their merest plea for a meeting and not even recognizing their existence, and with such lame excuses that Mr. Schine hadn't been told of a telegram that was on his desk for forty-eight hours.

Q. Then what occurred?

[fol. 252] A. At 6:30 in the morning of April 15th, instead of going to work the employees put up a picket line, and they picketed until they were restrained.

Q. Have you since learned, as a matter of fact, Mr. Dolan had been talking to Mr. Schine prior to your meeting with him, which you have just described?

A. I have since been told by the employees, who were in a position to know.

Mr. Sibley: I object to that on the grounds it is hearsay.

Judge Gordon: It is my case. I will sustain your objection.

Mr. Gettler: I call your attention to Page 298 of the record in which Mr. Dolan specifically stated that before he talked to Mr. Schine—before he met with Mr. Herman he had been talking to Mr. Schine that evening.

Mr. Sibley: The testimony, of course, is in the record, and it refutes what Mr. Herman said. We'll argue that.

Mr. Gettler: It is not refuting what Mr. Herman said.

Judge Gordon: I will sustain the objection. Go ahead.

By Mr. Gettler:

Q. On April 13, 1955, did you have any contact with anyone at the Algiers Hotel?

[fol. 253] A. Yes, sir.

Q. What was that contact?

A. By telephone I called Mr. Levenson. I called Mr. Posener. I called Mr. Kenin.

Q. Who are each of those gentlemen?

A. They are each known to me to be partners in the Algiers Hotel. I talked to them on several different occasions between the 13th and the 20th of April. I talked to Mr. Kenin on one occasion. He said he would like to discuss it with Mr. Levenson, and he would let me know. I talked with Mr. Levenson on another occasion, and he said he would like to talk to Mr. Kenin and he would let me know.

I called Mr. Kenin again, and the question finally resolved: "Look, we are part of the Association."

Q. Who said that?

A. Mr. Kenin told me in our final conversation. He said, "Look, we are a part of the Association. We are a part of a group, and whatever they do, we are going to do, too. Now, we are not going to be able to sit down and talk with you and do anything other than what is the official policy of the Hotel Association."

Q. When you say the Hotel Association, are you referring to the Miami Beach Hotel Association?

A. Yes, sir, the Miami Beach Hotel Association.

Q. When was that last conversation that you are just de-

[fol. 254] scribing?

A. The last conversation was held on the 19th of April. I reported the abortive attempts to set up a conference to

the employees. They were very resentful. They set up a picket line on April 20th; instead of going to work they went out on the picket line, and they were picketing until they were restrained.

Q. After April 13, 1955, did you have any contacts with the owners of the Sherry Frontenac and the Sans Souci Hotels?

A. That I did. I called Mr. Lansburg a number of times.

Q. Who is Mr. Lansburg?

A. Mr. Lansburg is known to me to be part owner or a partner or principal owner or anyway the director, the spokesman for the Sherry Frontenac and Sans Souci Hotels. I had called Mr. Lansburg a number of occasions and tried to talk with him between the 13th and the 17th of April about this, but I was unable to reach him on the telephone until the 17th of April. That was on a Saturday. It was sometime early in the afternoon about two or two-thirty. I finally got Mr. Lansburg on the phone.

"Mr. Lansburg, what do you plan to do about the situation with respect to the Sherry Frontenac and the Sans Souci Hotel?" "What's the problem?" Mr. Lansburg asked me. [fol. 255] "You know what the problem is. You had meetings of your employers in both of these hotels. You have recorded the speeches that were made to the hotels. You had them told by the manager that if they walked out they would lose their jobs. You know there is a problem. You know there is something brewing in there. Why don't we sit down and discuss the thing and see if we can avoid a walkout and avoid a strike and avoid the inconvenience and the distress that goes with it?"

Mr. Lansburg said, "Look here, Mr. Herman, I'm not alone in this picture. I have partners." "I know you have partners." "This is my partner, Doc Leevy, who is out of town. He is in Chicago. Here's his number. Call him up."

I said, "Look, Mr. Lansburg, you call your own partners up. If he is your partner and he is in Chicago, you call him up, and you discuss it with him." I said, "Frankly, I have reason to suspect that you have already discussed this matter not only with Doc Leevy, but with all your other partners. You haven't been living in a vacuum. You know what

is going on. You have been reading the press. You have been seeing the picket lines in the other hotels. It has been going on since April 13th. Don't tell me this is suddenly a surprise to you that we represent the employees in your hotels, because if you didn't suspect and believe that we represented the employees in your hotels, you wouldn't have called the meetings of those hotels and have your managers try to dissuade them from walking out. If you feel you have to make some telephone calls, make them and [fol. 256] let me know. I have to leave my office at 4 o'clock. I'm having a meeting of your employees at 4 o'clock at which time I am going to have to report the result of our conversation with you. So please let me hear from you by 4 o'clock so I can make an intelligent report to the employees."

I said, "If I don't hear from you by 4 o'clock I am assuming your attitude is the same as the others. You are stubbornly going to refuse to negotiate. I will make that report to your employees and they will be free to act whichever way they see best that will protect their interest."

By 4 o'clock I hadn't heard from Mr. Lansburg. I made the report to the meeting at about 5 o'clock. The employees walked out of the Sherry Frontenac, put on a picket line and picketed until they were restrained; and at 6 o'clock the next morning the employees of the Sans Souci did the same thing.

Q. During your conversation with Mr. Lansburg, did you advise him that Local 255 represented employees of the Sherry Frontenac Hotel and Sans Souci Hotel?

A. I advised him indeed and told him that he has no reason to doubt it because he must believe that we do or else he wouldn't have called a meeting of the employees and tried to talk them out of Local 255. I said, "Now, you know we represent your employees, don't you? Otherwise you wouldn't have called that meeting." He didn't deny it. He [fol. 257] said, "I have to call Doc Leevy." I said, "All right, call Doc Leevy and let me know."

Q. Since the various walkouts and the picketing, which started at the hotels over the period from April 13, 1955 to April 20, 1955, have you continued your efforts to contact the various owners of these plaintiff hotels and negotiate with them?

Mr. Sibley: I object to that on the grounds it is immaterial and irrelevant.

Mr. Gettler: We are in a Court of equity. It is on a motion to dissolve, and we are trying to show everything that has occurred up to date.

Judge Crawford: Objection overruled.

Mr. Sibley: May I say this, your Honors, in order that you may understand my position. We are here on a motion to dissolve a temporary injunction which your Honors were compelled to enter through an order of the Supreme Court of Florida. No pleading has been filed which alleges—that is, by the defendants—which alleges that any series of acts have occurred since the rendering of any injunctive order by your Honors pursuant to the Supreme Court's order which justifies a dissolution of the temporary injunction. [fol. 258] If they file a supplemental pleading, which they would have to do, stating the facts occurred since the throwing up of the picket line, which now justifies a picket line, and which would warrant us as to what we contend so we might meet it, then your Honors' ruling, of course, would be correct; but in the absence of a specific pleading setting forth that they seek to dissolve because these facts have occurred subsequent to the rendition of the order, and subsequent to the time the picket line was thrown up, which now justifies an action dissolving the injunction, they would be entitled to put the evidence in; otherwise not, because I am helpless in this situation. I am here to fight a motion to dissolve upon the ground that it was——

Judge Crawford: I understood the question to be were there any efforts made to negotiate following the picket line being put up.

Mr. Gettler: That's right, your Honor.

Judge Crawford: Which would have been before the hearing or before the injunction was granted.

Mr. Gettler: As I understand, a motion to dissolve in any event. If we file a motion to dissolve, we are permitted to bring before the Court any occurrences that have occurred up to the time we are here before your Honors so we can show you all matters that have occurred.

Mr. Sibley: Yes, if you file a supplemental pleading so [fol. 259] I will know what you contend.

Judge Crawford: As far as the objection to the question is concerned, it will be overruled.

By Mr. Gettler:

Q. You may answer the question.
A. Will the Reporter repeat the question?

(The pending question was thereupon read by the Reporter as above recorded.)

A. Yes.
Q. And when have those occurred, and describe those contacts?

Mr. Sibley: I make the same objection.
Judge Gordon: Do you intend to confine that to the time before the injunctive order was issued?
Mr. Gettler: As I understand, a motion to dissolve in an equity matter, we are permitted at any time to come before your Honors on a motion to dissolve and advise your Honors of certain additional facts that have occurred which should cause the dissolving of the previous order granted. As I understand, even if a final order was entered, we could show everything that occurred up to the time the motion to dissolve.
Judge Floyd: You'd have to plead it, though, wouldn't you?
Mr. Gettler: The motion to dissolve raises it, as I understand.

(Thereupon counsel argued to the Court.)

[fol. 260] Judge Crawford: Counsel, it is the consensus of the Judges we will allow testimony of any events up to the time of the filing of the motion to dissolve the temporary injunction.

By Mr. Gettler:

Q. Will you answer the question?
A. Will the Reporter repeat the question, please?

(The pending question was thereupon read by the Reporter as above recorded.)

A. Maybe we'd better go to another question.

Q. Let me repeat the question. Mr. Herman, you described a number of conferences and a number of attempts of negotiation prior to April 20th of 1955. Now, between April 20th, 1955, and the filing of the motion, June 2, 1955, have you made further attempts at negotiations?

A. Yes, sir.

Q. With the plaintiff hotel owners?

A. Yes, sir.

Q. Now, will you tell us when you made those attempts to contact them and negotiate with them, and what occurred?

A. I had contacted Mr. Ralph Snyder who was involved at that time by virtue of his being affected in the Sea Isle Hotel.

Q. Will you restrict yourself to these six particular hotels?

[fol. 261] A. Right. I had a number of conversations with Mr. Morris Lansburg between April 20th and June 2nd. The last specific one, the last specific conversation that I had with Mr. Lansburg in which we discussed the possibilities of a settlement of the present dispute——

Mr. Sibley: I object to that. Any conversation or reference to a settlement of these lawsuits is palpably improper, and I move to strike it.

Mr. Gettler: He didn't say "lawsuit."

Mr. Sibley: He said these disputes.

By Mr. Gettler:

Q. By "dispute" what are you speaking of?

A. The labor dispute.

Mr. Sibley: We are in Court about this, and I think any discussions with reference to settlement are privileged.

The Witness: I was talking with Mr. Lansburg, and he was talking on behalf of all the hotels in dispute.

Mr. Sibley: I object to that.

By Mr. Gettler:

Q. Are you speaking of the picketing or the lawsuit?

A. I am speaking of the picketing, the future picketing

and the past picketing. I am speaking of the labor dispute which has been on the first page of the newspapers for the [fol. 262] last sixty days.

Judge Floyd: I would be inclined to sustain the objection.

Judge Crawford: Contain your testimony then to the hotels that Mr. Lansburg represents.

The Witness: The last such conversation that I had with Mr. Lansburg prior to June 2nd was on May 25th. That was the date of our secret balloting election.

Mr. Sibley: What was the ruling of the Court?

Judge Floyd: I sustained it on behalf of the Sherry Frontenac. I am assuming the other Judges will rule.

Mr. Sibley: What was the ruling on the Sans Souci?

Judge Gordon: Does he represent the Sans Souci—Mr. Lansburg?

Mr. Sibley: Yes.

Mr. Gramling: May I direct this to Judge Floyd? I believe you also stated that you would confine any statement that Lansburg or any testimony pertaining to Lansburg to the hotels interested in it. He is interested in the Sherry Frontenac and the Sans Souci.

Judge Floyd: I am only interested in the Sherry Frontenac and Sorrento.

[fol. 263] Mr. Gramling: So is not this testimony for your purposes admissible so far as it affects the Sherry Frontenac?

Judge Floyd: I sustained the objection.

Mr. Gramling: Even though Lansburg is the principal of the Sherry Frontenac?

Judge Floyd: Yes.

By Mr. Gettler:

Q. Mr. Herman, did you endeavor to negotiate——

Mr. Sibley: Wait a minute. I want a ruling on the Sans Souci.

Judge Crawford: We'll have a ten minute recess.

(Thereupon a short recess was had, after which the following proceedings were had:)

Judge Gordon: We are going to listen to the answer and consider it as a proffer and rule on it after the proffer is made.

Judge Floyd: So that ruling will apply also to the time I sustained the objection on the question before.

Mr. Sibley: Then the objection is sustained, and he has a right to make a proffer.

Judge Gordon: We are going to rule on it after the answer is made so we will know what the proffer is.

[fol. 264] Mr. Gettler: Would you read the last question?

(The pending question and answer thereto were read by the Reporter as above recorded.)

By Mr. Gettler:

Q. Mr. Herman, what discussions did you have with Mr. Morris Lansburg, representing the Sherry Frontenac and the Sans Souci Hotels, between April 20, 1955 and June 2, 1955, in regard to representation by Local 255 of the employees of those two hotels?

Mr. Sibley: I make the same objection, but I understand the ruling.

The Witness: The discussion was general in nature with respect to the economic issues, the general labor dispute and specifically to the effect that I represented Local 255 as the director of organization; that I represented the majority of the employees in the hotels, and that they were out and that they were picketing, and that they would like to get it settled on a reasonable and fair basis.

By Mr. Gettler:

Q. What did Mr. Lansburg himself state as to the representation by Local 255 of the employees in the hotels?

A. Admitted my claim to representation of the employees. It was obvious. "I saw them walk out. I saw them there. I know they are picketing."

[fol. 265] Q. Is that what he stated?

A. Something to that effect.

Q. That is the substance of what he said?

A. That's right.

Judge Crawford: Just a moment.

Mr. Sibley: I want to add an additional objection and move to strike that phase of the witness' answer in which he said Mr. Lansburg admitted that the Union represented the employees—I believe you said a majority of the hotels without specifying which—upon the ground it is immaterial, it is irrelevant and calls for a conclusion of the witness. It is hearsay and it is not binding upon the hotels, and is privileged.

Mr. Gettler: I'd like to call your Honor's attention to the petition of the plaintiff in which the plaintiff states that Local 255 represented no employees. It is a direct rebuttal of the allegation of the petition.

Judge Crawford: The ruling is reserved.

(Thereupon Mr. Gettler further argued to the Court.)

Judge Crawford: The Court will recess until 1 o'clock.

[fol. 266] (Thereupon the Court adjourned until 1 o'clock p.m., of the same day, at which time the following proceedings were had:)

Judge Gordon: We are going to sustain the objection to the question asked and deny the proffer.

Mr. Gettler: As I understand, the question to which the objection is sustained is pertaining to the Sherry Frontenac and Sans Souci cases?

Judge Gordon: That's correct.

Mr. Gettler: On which Mr. Herman was testifying as in regard to conversations with Mr. Lansburg?

Judge Gordon: Because it indicated to us that he was speaking at the time the conversation took place rather than prior to the time of the walkout.

Mr. Gettler: Your Honors, in order to expedite matters, I'd like to make a proffer at this time and perhaps Mr. Sibley and I can stipulate to that, that if I would ask Mr. Herman the same question in regard to the other four cases, which are presently before your Honors, that substantially the same answer would be given, the same objection would be made, and the Court would make the same ruling.

Mr. Sibley: I have no objection to making a proffer on that generalized basis, if he wishes to.

Mr. Gettler: I want to get it to all six cases.

[fol. 267] Judge Gordon: Would you state, counsel, with whom the conversation was held? In the Roney Plaza case is the one I'm interested in.

Mr. Gettler: I will get at that with Mr. Herman.

By Mr. Gettler:

Q. Mr. Herman, did you have similar conversations with anyone from the Monte Carlo Hotel; that is, similar to the conversation you previously described with Mr. Lansburg?

A. The conversations I had with Mr. Lansburg pertained to all of the hotels involved in the dispute.

Q. Did you not have conversations with anyone else specifically in regard to the Monte Carlo Hotel? Is that correct?

A. Not up until June 2nd.

Q. Not before June 2nd?

A. Not before June 2nd, no, sir.

Q. In your answer you are referring to the period between April 20th and June 2nd?

A. Yes, sir.

Mr. Gettler: I withdraw that request for the stipulation.

Mr. Sibley: All right.

By Mr. Gettler:

Q. Mr. Herman, on May 25, 1955, was a secret ballot election held to determine the question, "Do you authorize a strike in your hotel for the purpose of gaining recognition [fol. 268] in Hotel Employees Union Local 255, A.F.L. as your collective bargaining agent so it can negotiate on your behalf higher wages, lower hours, welfare benefits and such other improvements in your working conditions?"

A. Yes, sir.

Mr. Sibley: We object to the question and move to strike the answer on the grounds that it is immaterial, irrelevant and having occurred after the walkout and after the unlawful picket line has been enjoined. Now, I understand counsel is desirous of facilitating this matter. These ballots have been admitted, I believe, in other cases?

Judge Floyd: No, not the ballots. The witnesses have testified about them.

Mr. Gettler: At this time we are going to proceed to get from Mr. Herman the results of the election and offer the ballots themselves in evidence. That's the purpose of this question. That's what I'm leading up to. As I understand your Honors previously in regard to those questions, when there was an objection made you withheld ruling until final argument on the relevancy of the election held on May 25, 1955. That could probably be handled that way on these few questions. There are only three questions and we'll be through with Mr. Herman.

[fol. 269] Mr. Sibley: All this balloting which is alleged to have occurred occurred after these picket lines had been thrown up and after these strikes had occurred and after the case has been appealed to the Supreme Court of Florida, and I think after the ruling of the Supreme Court of Florida, or after Judge Carroll's ruling—I'm not sure which—and it involves striking employees and not the employees then presently employed at the hotels on May 25th, and the procedure followed was illegal and improper. I have no objection to him getting them in as an exhibit to be considered if and when it may be presented to the Supreme Court of Florida. I don't want to hold them down.

Judge Crawford: I believe that it would be agreed by counsel that in objections to previous questions concerning the strike vote we reserved our ruling until all the testimony was in, and we could see whether or not it was relevant and material at that time. Is that correct?

Mr. Gettler: That's correct.

Mr. Sibley: I think that's correct, your Honors.

Mr. Gettler: Yes.

Judge Floyd: Because the objection was on the relevancy.

[fol. 270] Judge Crawford: Suppose this additional material concerning that issue be now admitted subject to the Court's ruling on the objection, and we'll make one ruling which will be applicable to all that particular phase of the testimony at one time.

Mr. Sibley: Subject to the additional objection that the authenticity of whatever they have got here has been established.

Judge Crawford: At this time.

Mr. Sibley: Yes.

Judge Crawford: All right.
Mr. Sibley: Then I have no objection to them.
Judge Crawford: Go ahead with your question.

By Mr. Gettler:

Q. Mr. Herman, was an election held among employees of the Sherry Frontenac; that is, a secret ballot election on the question previously stated?
A. Yes.
Q. Are these the official ballots?
A. Yes.
Q. What was the result of that ballot?
A. There were ninety——

Mr. Sibley: I object to that on the ground that the ballots are the best evidence, if they have been properly identified.
[fol. 271] Judge Floyd: That objection is technically correct. Get the ballots in and then ask him to state what—if he has to count them one by one.
Mr. Sibley: If they are going to be admitted subject to the Court's ruling, I don't want him to count them now. He probably has already counted them, and if they come in under the Court's ruling, then he can go ahead and make the statement. But I don't want him to make a statement what it is about and put them back in the brief case.
Mr. Gettler: No; I'm offering them in evidence.
Judge Crawford: Are they by hotels?
Mr. Gettler: They are by hotels.
Judge Crawford: What is the first one?
Mr. Gettler: Sherry Frontenac

By Mr. Gettler:

Q. Did you total these ballots, Mr. Herman?
A. Yes.
Q. How many are there?
A. Ninety.
Q. And how many of them are marked "Yes" and how many "No"?
A. Ninety are marked "Yes"; none marked "No".

Judge Floyd: It will be admitted subject to the Court's ruling. It will be Defendants' F, Sherry Frontenac.

[fol. 272] (The ballots referred to were thereupon marked "Defendants' Exhibit F, Sherry Frontenac".)

By Mr. Gettler:

Q. Was a similar election held, Mr. Herman for the Roney Plaza employees?
A. Yes.
Q. Have you totaled the ballots?
A. Yes.
Q. Are these the ballots?
A. Yes.
Q. How many of them are here?
A. One hundred and ten.
Q. And how many of them are marked "Yes" and how many "No"?
A. One hundred and ten are marked "Yes". None are marked "No".

Mr. Gettler: We offer these ballots in evidence.
Judge Gordon: Same ruling.

(The ballots referred to were thereupon marked "Defendants' Exhibit U-C-5, Roney Plaza".)

By Mr. Gettler:

Q. Was a similar election held, Mr. Herman, among the employees of the Monte Carlo Hotel?
A. Yes.
[fol. 273] Q. Are these the ballots?
A. Yes.
Q. How many of them are here?
A. Sixty-one.
Q. And how many are marked "Yes", and how many "No"?
A. Sixty-one are marked "Yes"; none are marked "No".

Judge Crawford: F, Monte Carlo, subject to the ruling on the motion.

(The ballots referred to were thereupon marked "Defendants' Exhibit F, Monte Carlo".)

By Mr. Gettler:

Q. Was a similar election held, Mr. Herman among the employees of the Sorrento Hotel?

A. Yes.

Q. Are these the ballots?

A. Yes.

Q. Have you totaled them?

A. Yes.

Q. How many are there?

A. Thirty-eight.

Q. How many "Yes" and how many "No"?

A. Thirty-eight "Yes", and none "No".

Mr. Gettler: We offer those in evidence.

Judge Floyd: Same ruling.

[fol. 274] (The ballots referred to were thereupon marked "Defendants' Exhibit G, Sorrento".)

By Mr. Gettler:

Q. Was a similar secret ballot election held among the employees of the Sans Souci Hotel?

A. Yes.

Q. Are these the ballots?

A. Yes.

Q. How many of them are there?

A. One hundred and three.

Q. How many marked "Yes" and how many marked "No"?

A. One hundred and three marked "Yes"; none marked "No".

Judge Gordon: Under the same ruling, U-C-5, Sans Souci.

(The ballots referred to were thereupon marked "Defendants' Exhibit U-C-5, Sans Souci".)

By Mr. Gettler:

Q. Was a similar election held among the employees of the Algiers Hotel?

A. Yes.

Q. Are these the ballots?

A. Yes.
Q. How many of them are there?
A. One hundred and twenty-four.
Q. How many of them are marked "Yes" and how many [fol. 275] "No"?
A. One hundred and twenty-four are marked "Yes"; none marked "No".

Judge Crawford: That's Defendant's Exhibit E, Algiers, subject to the ruling on the motion.

(The ballots referred to were thereupon marked "Defendants' Exhibit E, Algiers".)

By Mr. Gettler:

Q. Mr. Herman, was there an election held among the employees of the various named hotels within the jurisdiction of Local 255?
A. Yes.
Q. All these elections were held on May 25, 1955; is that correct?
A. Yes.

Mr. Gettler: That's all.

Cross examination.

By Mr. Sibley:

Q. Mr. Herman, these questions will be directed to you in order to qualify you in reference to my objection to these alleged ballots. There were two voting places under this alleged election; is that correct?
A. No, sir; there were three.
Q. Three; and where were they located? One at your office, one at the Union's office——
A. One in the Union Headquarters at 1575 Washington [fol. 276] Avenue.
Q. Wasn't there one one Alton Road?
A. One at the strike headquarters union, 920 Alton Road, and the third one at the offices of Local 133 in Miami.
Q. As I understand it, as far as you know, there was a ballot box at each of these polling places; is that correct?

A. Yes, sir.

Q. There were some young ladies at a table, at each of the polling places, where a man came in when he wanted to vote. He would come in and use a ballot; is that correct?

A. Yes, sir.

Q. These ballots were all deposited in the same ballot box; is that correct?

A. Yes, sir.

Q. Obviously you were not present while the balloting took place at all three places at the same time?

A. Obviously.

Q. You had an election manager in the form of a Mr. Sam Gysan; is that correct?

A. He was the election supervisor.

Q. He was the election supervisor?

A. He and such deputies as were designated by him.

[fol. 277] Q. You got these ballots after they had been gathered up by somebody from these boxes and been counted, and then they were delivered into your custody; is that correct?

A. May I describe it, sir?

Q. Just answer my question.

A. Generally, that's correct.

Q. Did you count the ballots?

A. No, sir. I counted the ballots after they were handed to me—not in the first instance.

Q. You didn't have anything to do with opening the ballot boxes and counting the ballots?

A. No, sir.

Q. Who brought the ballots to you and gave them to you?

A. The members of the election committee, the deputies that were designated by Mr. Gysan on the second day following the election. All that I knew the night of the election was when the total was counted. There was a number of 2,804 in favor of the strike and 44 against.

Q. Now——

A. The next day.

Q. Wait a minute, please. That was reported to you by somebody?

A. Yes.

Q. Who reported that to you, Mr. Gysan?

[fol. 278] A. No. Mr. Gysan left towards the end of the count. He had to go to his broadcast. It was reported by the people who were in charge of the counting of the ballots. There were about a hundred and fifty people in the room. Four people were directly in charge of the counting of the ballots. The totals were handed to me by—perhaps I think it was Al Gonzales who handed me the totals, and I announced them over the telephone to the people present.

Q. Then these ballots, which have been admitted conditionally in evidence, were delivered to you on the subsequent day?

A. No, sir. Then those ballots remained in the custody of the committee that was in charge of the election. They then separated them as to each hotel. They tabulated the number of votes in each hotel as to the "Yes" and "No" vote, and then they delivered the ballots to me after they tabulated them, and after they entered their tabulation into a pad and entered the results.

Q. I understood you said it was the following day that they actually came to your custody?

A. I said it was the day following the election, the second day following the election. The election was held on a Wednesday, I believe. I came into possession of these ballots on Friday.

Q. Mr. Herman, you had testified of your own knowledge, [fol. 279] as you put it—at least the question was put to you that way—that two hundred and five employees of the Algiers were members of your Union prior to the time that the picket line was drawn up. Is that correct?

A. No, sir. I testified that two hundred and five authorization cards were signed among the Algiers employees to designate Local 255 to be their collective bargaining agency.

Q. Is that true of the one hundred and forty-five of the Sans Souci? You had authorization cards on them; is that right?

A. Yes.

Q. You had authorization cards on the hundred and twenty you testified about in the Sherry Frontenac; is that correct?

A. Yes.

Q. And you had two hundred and seven authorization cards in the Roney Plaza; is that correct?

A. Yes, sir.

Q. And you had a hundred and five on the Monte Carlo; is that correct?

A. Yes, sir.

Q. And you had sixty-eight on the Sorrento; is that correct, sir?

A. Yes.

Q And those are the cards which now are in evidence? [fol. 280] A. Yes, sir.

Q. And on the basis of those you gave your testimony?

A. Yes, sir.

Mr. Sibley: You may come down, sir.

Mr. Gettler: Just a moment, Mr. Herman.

Redirect examination.

By Mr. Gettler:

Q. In addition to the designation cards, did you base your previous testimony on applications for membership and oral designations by individuals employed at the hotels?

A. As to the number that we represent; is that what you mean?

Q. Yes.

A. The authorization cards, the application for membership, those applications for membership, which are in the process of completion, because we are necessarily forty-five days behind our completion work; from the time an application is made the application is filed in a local office, has to go through the process of record making in the local office, and then goes to the International office in Cincinnati. The period between the time of the application and the report at Cincinnati is approximately forty-five days, because the report for the previous month does not go in until the 27th day of the following month; so that the applications that were offered here of actual members in [fol. 281] good standing are those that had qualified during the month of April, and they were sent in May. There are others that had qualified during the month of May, and

they will not be sent in until the end of June. Now, taking all this that we have—the applications, the authorization cards, and the participation of the people in the walkout activities—added up to the sum total I gave here.

Mr. Gettler: That's all.

Recross examination.

By Mr. Sibley:

Q. I understood you to state that it was based upon the records that you have, and which you have detailed in your last answer; is that correct?

A. It is based upon all of the records that we have, and which I have during the course of my three hour testimony detailed, yes, sir.

Mr. Sibley: You may come down, sir.

(Witness excused.)

Mr. Gettler: Call Mr. Al Gonzales.

Thereupon—Al Gonzales was called as a witness on behalf of the Defendants, and having been first duly sworn, was examined and testified as follows:

Mr. Sibley: Before you inquire, may I ask this witness a question about having violated the provision of the rule? [fol. 282] Mr. Gettler: Yes; because I have asked him to stay out.

Q. Mr. Gonzales, you were present last Saturday during the trial of this cause in the courtroom, weren't you?

A. I was for part of it, yes, sir.

Q. You heard some of the testimony here, didn't you?

A. Today?

Q. No; last Saturday, sir.

A. Last Saturday I walked in in the courtroom, yes, I did.

Q. Well, Mr. Gonzales, you were sitting in the courtroom while the case was being tried?

A. Not throughout the case.

Q. But during the trial of the case.

A. I came in at the end when they adjourned the case. I heard that when the Judges adjourned the case. I was outside most of the time.

Q. Most of the time; but part of the time you were in here while the testimony was being taken, weren't you?

A. At the end of the trial I walked in when I heard the Judges adjourn until Saturday.

Q. Answer my question, sir: Did you not sit in at the [fol. 283] time——

A. Not throughout the case.

Q. I don't mean throughout the case, but part of the time while the case was being tried.

A. At the end I walked in.

Q. You heard witnesses testify in this case last Saturday while you were in the courtroom, didn't you?

A. I didn't hear witnesses, no.

Q. You were not present while this case was being tried in the courtroom?

A. I was not in here throughout the case, no, sir.

Mr. Sibley: I ask the witness be disqualified.

Mr. Gettler: May I ask a question or two of the witness?

Mr. Sibley: As a matter of fact——

Mr. Gettler: Let me make a statement before I ask him any question, and that's this, your Honors. There is only one purpose I have to ask Mr. Gonzales about. I hadn't intended to call him, and that is in regard to questions Mr. Sibley just asked of Mr. Herman in regard to the counting of the ballots. As Mr. Herman testified, Mr. Gonzales was on the committee that actually did the counting. There was no evidence last Saturday from any witness whatsoever in regard to these ballots. Mr. Gonzales [fol. 284] has not been in here today, and he said in answer to Mr. Sibley he was not in the courtroom when any witness was being questioned. He came in at the tail end when the court was adjourning. He certainly hasn't violated the rule, and his testimony on that one narrow point, which I am advising your Honors I am going to restrict it to, certainly on that point there's no question of violation here.

Judge Crawford: The objection is sustained.

Mr. Gettler: May I ask the witness a question, your Honors, before he is excused? I want to find out one thing. If he was here when any witness——

Judge Crawford: One of the Judges recalls him being in the courtroom while testimony was being presented.

Mr. Sibley: So do I.

Offers in Evidence

Mr. Gramling: Now, if your Honors please, I'd like to offer in evidence at this time the following portions of the court files in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, in Chancery, No. 121214-B, wherein the Hotel and Restaurant Employees and Bartenders Union, Local No. 133, American Federation of Labor, was the plaintiff, and the Vanderbilt Hotel Corporation, a Florida corporation, Morris Lansburg, and [fol. 285] others, and the Miami Beach Hotel Owners Association was the defendant. The original file, unfortunately, I could not obtain from the Clerk's office because I find that it has been withdrawn from the files by opposing counsel, but I am sure that opposing counsel will agree that until they can supply the original court file or the portions that are offered in evidence that the carbon copies of my office file will suffice for the present purpose, and I would offer the amended bill of complaint, the order of the Hon. George E. Holt dated the 31st day of December, 1948, and the order making the temporary restraining order against the Hotel Owners Association and its members permanent, dated the 16th day of February, 1949, entered by the same Hon. George E. Holt; and for the relevancy of this proffer in the testimony, I respectfully represent to this Honorable Court that the law of this Circuit was established in 1948. It was not appealed and not reversed, and it is still the law of this Circuit; that the hotels of Miami Beach in labor matters work by and through the Hotel Owners Association; that, in fact, a conspiracy was found to exist between the Hotel Owners Association, and the last order making this injunction permanent also in- [fol. 286] cluded a clause for a rule nisi for the Miami Beach Hotel Owners Association to file answers to inter-

rogatories on or about or before a date certain to show cause why it and its officers should not be dealt with as in contempt of this Court, and I would respectfully show unto your Honors that having been judiciously ascertained in this jurisdiction that the constituent members of the Hotel Owners Association, meaning the individual hotels, all act in concert by and through this organization, and places this organization practically or literally as a party to this cause. In fact, you have pending now a motion to join the Association as an additional party defendant, and I think you will recall the ruling on that motion has been withheld pending further proceedings in the matter.

We feel that this is relevant for several reasons, first of which is that Mr. David Herman, speaking on behalf of Local 255, had a right not only based upon common sense and upon facts to treat with the Hotel Owners Association and its Board of Directors as being the true and proper spokesman for the organization, but, further, he had behind him the ascertainment by the Hon. George E. Holt after the taking of testimony and after the witnesses [fol. 287] were heard for both sides, that in fact the hotels do act in conspiracy each with the other by and through the Hotel Owners Association.

I would ask the Court to take judicial knowledge of its own files in this cause and the other official court files in this particular case, but I feel it would probably be better procedure to offer the pertinent portions of that record in evidence, and I don't believe that the authenticity of these carbon copies will be disputed, certainly not until such time as Mr. Sibley could furnish us with the original court file which he withdraw (sic) at the commencement of all of this litigation.

Mr. Sibley: I might say in reference to withdrawing this file, Mr. Gramling has on more than one occasion, while other cases were being heard, requested me to produce that file, and I have always very willingly had it in court.

Mr. Gramling: I don't mean to imply——

Mr. Sibley: No request was made for that file at this time, because I would have willingly had it in court. Although I object to the file upon the ground it is immaterial and irrelevant, I feel like if it is going in for whatever

it is worth, why, the entire file should be put in evidence, [fol. 288] and I will produce that for the Court at any time. I might say in reference to your final determination of the case dealing with the relevancy of this file, there is no such adjudication in the file as Mr. Gramling refers to in the first instance; and, in the second instance, most of these hotels were built after 1948, and whatever the Hotel Association might have been doing in 1948 doesn't have anything to do with the members of the Association, and the present plaintiffs in this case.

As I recall, an injunctive order was issued against the Hotel Owners Association, and it was permanently dissolved, and thereafter about two years after the order was dissolved and the cause dismissed, Mr. Gramling got an ex parte order, I thought, from Judge Wiseheart in 1953 —I believe it was 1954. He got an order in 1954, four years after the case had been dismissed, in which he got a determination that the Hotel Owners Association might in that case represent the Dempsey-Vanderbilt Hotel. That was four years after the case was dismissed, four years after the case had been completed. I have no objection to the court file being inspected by the Court.

Mr. Gramling: Let the whole file go in. I do not mean [fol. 289] to impute anything devious, and I asked you for it, and I am sure you brought it.

Mr. Sibley: Any time you asked for it, I brought it here.

Mr. Gramling: Gentlemen, these are the pertinent portions.

Judge Crawford: The Court will take judicial knowledge of its own records; as far as the objection into evidence by the plaintiffs' counsel, the objection is sustained.

Mr. Gramling: I don't believe you objected.

Mr. Sibley: I objected to it on materiality.

Judge Crawford: That's the basis of the Court sustaining the objection.

Judge Floyd: He objected to the introduction in evidence. He doesn't mind if we go down and look at it.

Mr. Sibley: I will bring it over for you to look at.

Mr. Gramling: Since you would take judicial knowledge of it, the case number is 121214, and may I at least offer this for identification?

Judge Crawford: Mark it for identification. Mr. Sibley stated he would produce the original.

[fol. 290] (The file referred to was thereupon marked "Defendants' Exhibit DD for Identification".)

Mr. Gettler: At this time we rest, your Honors.

Thereupon—RICHARD J. DOLAN was called as a witness on behalf of the Plaintiffs, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Mr. Dolan, you testified application was made for temporary injunction, didn't you?

A. That is correct.

Q. And your testimony is in the record in this case?

A. That is correct.

Q. At the time the employees walked out of the Roney Plaza——

Judge Gordon: Let's get his full name in the record for the Court Reporters.

By Mr. Sibley:

Q. Please state your full name?

A. Richard J. Dolan.

Q. You are the same person who has heretofore testified in this cause and whose testimony appears in the record?

Mr. Gettler: Your Honor, before Mr. Sibley proceeds, [fol. 291] I'd like to ascertain whether this gentleman is an officer of the corporation, and as to whether he has been in the courtroom during the trial of these proceedings since the rule has been invoked.

Mr. Sibley: He has been designated as the representative of the Roney Plaza.

Mr. Gettler: Are you an officer of the Roney Plaza?

The Witness: General Manager of the Roney Plaza Corporation, yes.

Mr. Gettler: Are you an officer of the corporation? Are you a president, secretary or treasurer, vice-president?

The Witness: General manager. As such I signed the complaint.

Judge Crawford: Counsel, to save time, I think that we are agreed that each defendant may have one representative. I believe that was the original announcement. That would be each plaintiff may have one representative.

By Mr. Sibley:

Q. Mr. Dolan, when your employees walked out of the Roney Plaza Hotel on I believe it was April 15th—is that correct?

A. Yes, sir.

[fol. 292] Q. What did you do?

A. We proceeded to replace with permanent employees all of the employees who failed to report for available work on the 15th of April.

Mr. Gettler: Your Honors, we ask that question and answer be stricken as totally irrelevant to the cause. There is no prayer of any kind by the defendants to prevent the plaintiffs from employing new employees. This regards the properness of picketing, whether picketing can continue. There can be no relevancy of questions and answers pertaining to the replacement of employees.

Judge Crawford: The Court will reserve its ruling on the motion and allow the witness to testify.

Mr. Sibley: You may inquire.

Mr. Gettler: No questions.

(Witness excused.)

Mr. Sibley: Will counsel stipulate to save time that the operators of the other hotels will testify likewise?

Mr. Gettler: Subject to the same objection.

Mr. Sibley: Yes, sir, with that stipulation.

Judge Gordon: Let's get the name of the person who would testify to that.

Mr. Sibley: Mr. Lansburg will testify on behalf of the [fol. 293] Sans Souci and Sherry Frontenac. Mr. Kenin will testify on behalf of the Algiers. Mr. MacIntyre with

reference to the Monte Carlo. Mr. Freidman with reference to the Sorrento.

The plaintiffs rest.

Judge Crawford: We will hear argument on each side; thirty minutes to the side.

(Thereupon counsel for the respective parties argued to the Court.)

Judge Crawford: Thank you very much, gentlemen. Each of the Judges will announce their decision after they have done some research that they feel important. This court is adjourned.

(Thereupon the hearing was concluded.)

[fol. 294] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 295]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 178,667

LEEVLANS CORP., Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Defendants.

ORDER DENYING SUPERSEDEAS—June 17, 1955

This Cause came on to be heard upon plaintiff's motion for order for supersedeas in which plaintiff seeks to supersede the order of the Court entered on June 17, 1955, in which the Court dissolved its injunctive order heretofore entered in this cause, and it appearing to the Court that plaintiff is about to file a petition for certiorari in the Supreme Court of Florida complaining of said order of dissolution and that plaintiff desires that said petition shall

operate as a supersedeas and seeks an order of this Court fixing the amount and conditions of a supersedeas bond and the Court being advised in the premises.

It Is Thereupon Ordered, Adjudged and Decreed that the said motion be and the same is hereby denied and the [fol. 296] said supersedeas is hereby refused.

Done and Ordered in Chambers at Miami, Florida, this 17th day of June, 1955.

/s/ J. Fritz Gordon, Circuit Judge.

[fol. 300]

IN THE SUPREME COURT OF FLORIDA

TALLAHASSE, FLORIDA

LEEVLANDS CORPORATION, Petitioner,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, (A. F. of L), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

PETITION FOR ISSUANCE OF WRIT OF CERTIORARI—
Filed May 16, 1955

The Petitioner, Leevlands Corporation, files this, its Petition seeking the issuance of a Writ of Certiorari directed to an order of the Circuit Court of the Eleventh Judicial Circuit, in Chancery, in which the Petitioner's application for a temporary injunction against Hotel Employees Union, Local No. 255, and the other respondents above-named, was denied, and for such Petition, it is alleged:

I

On April 18, 1955, the Petitioner, Leevlands Corporation, filed its sworn bill of complaint against the Respondents (Tr. 1) seeking a preliminary and permanent injunction.

Petitioner, on April 28, 1955, applied for temporary injunction, predicated upon the sworn bill of complaint. This temporary injunction was, by order of the Circuit Court, denied on April 30, 1955. *No answer or other defensive pleadings were filed by the respondents, and no testimony was introduced* by them at the hearing before the Chancellor. Therefore, the only question to be determined by the Supreme Court of Florida in passing upon the pro- [fol. 301] priety of the lower court's order in denying a temporary injunction, is whether or not the allegations of the sworn bill of complaint, taken in conjunction with the evidence produced by the Petitioner, lawfully entitles the Petitioner to a temporary injunction.

II

In the bill of complaint, the Petitioner alleged that it was the owner of a $5,000,000 ocean front hotel situated in Miami Beach, and that since its construction five years before, it enjoyed the finest reputation and had earned excellent and valuable good will, and was a lucrative investment. The Petitioner employs approximately 310 people at its hotel, who perform services as cooks, waiters, bell boys, maids, elevator operators, and other such duties. (Tr. 2). *The Petitioner had no labor dispute with its employees in regard to wages, working conditions, or any other phase of employer-employee relationship.* It afforded its employees a satisfactory standard of pay and proper working conditions. (Tr. 2).

III

Early in 1955, a labor organizer was sent to Miami Beach with the announced intention of creating labor discord, and with the purpose in mind of organizing a union among the employees of the hotels on Miami Beach, for the sole purpose of collecting dues and reaping a harvest of money for such organizer and the union sought to be created. This intended labor organization was designated the Respondent, Hotel Employees Union, Local No. 255, A. F. of L. The organizers of the said union utilized pressure tactics to force and intimidate employees of the Petitioner to become

members of such labor organization. The efforts of the organizers to procure a majority of the Petitioner's employees as members of said union failed. Thereafter, the organizers sought to place pressure on the Miami Beach [fol. 302] Hotel Owners Association through its President, and threatened that economic sanctions, such as picket lines, would be placed around hotels whose owners are members of the Association, causing great economic loss to them, unless the hotel Association successfully brought pressure to bear upon the owners of the several hotels on Miami Beach to recognize the embryonic union, and to give to it a union contract on all of the employees employed at the several hotels. The Miami Beach Hotel Owners Association *had no power or authority to represent the owners of the individual hotels in reference to any labor matters.* (Tr. 4).

IV

Petitioner had no dealings whatever with any organizer or member of the Hotel Employees Union, Local No. 255. This union never sought to negotiate with the Petitioner, never claimed to represent the Petitioner's employees. In fact, it does not represent the vast majority of the Petitioner's employees. No controversy or negotiations in reference to any labor dispute was ever inaugurated, initiated or carried on between the Petitioner and the alleged union. Said respondent Union, as the alleged representative of the Petitioner's employees, has never sought to bargain with the Petitioner, and the Union was never authorized by a majority of the Petitioner's employees to represent them. (Tr. 4-5).

V

Petitioner never refused to recognize the Respondent union, and never refused to negotiate with the said union. The Petitioner was never requested by the said union to negotiate with it, and was never advised by the union that the union was the bargaining agent for the Petitioner's employees, save and except that a representative of the respondent labor organization telephoned an officer of the [fol. 303] Petitioner at 3:30 P. M. on Saturday, April 16,

1955, and demanded that Petitioner recognize the aforementioned union by 3:45 P. M. on said date or face a walkout of its employees. No demand or grievance of any nature whatsoever of the Petitioner's employees had been made to or placed before the Petitioner, or its officers. (Tr.).

Notwithstanding this to be undisputed, the union, at 3:45 o'clock in the afternoon, on Saturday, April 16, 1955, placed a picket line consisting of six or more pickets, in front of the Petitioner's place of business, each picket carrying a placard bearing the following statement:

> "This hotel refuses to negotiate with Hotel Employees Union, Local #255, American Federation of Labor, 1575 Washington Avenue, Miami Beach."

Such representation is false and untrue. Such statements are made to deceive the public. And, such picket line was thrown up for an illegal purpose in that it was thrown up to place economic pressure on the Petitioner in order to force the Petitioner, through loss of revenue thus occasioned, to execute a labor contract with the said union as the representative of the Petitioner's employees. Such conduct is unlawful and contrary to the Laws of the State of Florida. (Tr.).

VI

On April 12, 1955, the union organizers called a meeting of the Petitioner's employees in order to seek to procure a strike vote as required under §447.09, Florida Statutes. Only a few of the Petitioner's employees attended; no strike vote was taken, and no election was had. (Tr.).

VII

On April 16, 1955, at the time the picket line was thrown up, the labor organizers and their henchmen in large numbers congregated at the Petitioner's place of business, and as the Petitioner's loyal employees arrived, each was accosted and urged to join the respondent's strike. Some of [fol. 304] the employees were threatened; many of them were intimidated; some of them were beaten. Several of the employees have and are receiving anonymous telephone calls of threats of bodily harm and injury. Most of the

Petitioner's employees who refused to attend work on April 13, 1955, did so because of the coercion and intimidation placed upon them by the respondents, all of which was unlawful. (Tr.).

VIII

The Respondent union is maintaining a picket line. Said picketing is unreasonable. The pickets are carrying a false banner. This conduct has caused irreparable loss and damage to the Petitioner.

IX

By amendment filed April 27, 1955, the Petitioner set forth that the picketing had become violent, that the pickets were using obscene language and were threatening guests and employees; telephone operators were being harassed, threatened and abused; physical violence had been inflicted upon several of the employees; these occurrences having caused wide-spread terror, fear and intimidation among the employees working at the Petitioner's hotel. As a part of the plan to terrorize and intimidate Petitioner's employees, the Respondents systematically took down license plate numbers of employees' cars as they arrived, and took photographs of each employee as he entered or left the hotel; that the picketing was unlawful in that the Respondent was fraudulently representing, by said picketing, that the employees at the hotel were on strike. The complaint prayed for a temporary and permanent injunction, enjoining the picketing at Petitioner's place of business, or from advertising or publishing false, scandalous statements in reference to the Petitioner's business, or engaging in any act or method of boycotting or injuring Petitioner's business, either by picketing or otherwise.

[fol. 305]

X

The evidence disclosed that a union organizer by the anme (sic) of David Herman was sent to Miami Beach by the international president of the Hotel and Restaurant Employees and Bartenders International Union, (A. F. of L.) (Tr. of Testimony 31) in January, 1955, to organize a local union composed of hotel employees. Herman is the President of Local Union No. 6, Hotel and Club

Employees Union, in New York City (Tr. of Testimony 30). Some of his associates in New York also asked him to come to Miami Beach to organize a union. His purpose is to force the hotel owner to recognize the union (Tr. of Testimony 57).

The hotel manager testified that no effort was made by this embryonic labor union to negotiate with the Petitioner (Tr. of Testimony 63).

On the day that the picket line was thrown up, a number of hotel employees arrived for work, but were intercepted by the labor organizers and their henchmen (Tr. 8).

A Sergeant on the Miami Beach Police Force testified that he observed pickets attacking physically a patron of the hotel and made an arrest because of such incident. (Tr. of Testimony 228 and 229).

Many witnesses testified as to the threats, force and violence imposed upon them by the union organizers, and their pickets. Although these acts did not occur at the Petitioner's hotel, the Sans Souci, they are a part of the general pattern adopted by the respondents to enforce economic sanctions against the Petitioner.

XI

The union organizers have fraudulently advertised in newspapers in New York, Chicago, St. Louis and Cincinnati, that the employees of the Petitioner's hotel and other hotels on Miami Beach are on strike. (See Exhibits #1, 2, 3, 4.) Moreover, they have commenced picketing in New York City, as shown by plaintiff's (petitioner's) Exhibit 13 a, b, c, contrary to the Statute, and in this picket banner, there are fraudulent and false statements that the employees of the Petitioner are on strike.

XII

No evidence was adduced by the respondents, no answer was filed by them, and all of these facts are undisputed in [fol. 306] the record, both as they are alleged in the Petitioner's sworn bill of complaint, and as was established by those witnesses called by the Petitioner. Without any conflict in the evidence, the lower court refused to enter a temporary injunction.

XIII

Petitioner specifies that the said order is erroneous for the following reasons:

(a) Because the record discloses that the picketing of Petitioner's place of business by the respondents *is admittedly for an illegal purpose and that it is causing irreparable injury and damage to the Petitioner's business.*

(b) Because the record discloses that the picketing of the Petitioner's place of business by the respondents *is admittedly violent and is carried on in the background of fear, intimidation, coercion and force.*

(c) Because the respondents' conduct in picketing the Petitioner's place of business, together with the respondents' picketing in New York City, the false advertisements in daily newspapers in New York, Chicago, St. Louis and Cincinnati, *are a part of a fraudulent scheme to force the Petitioner to sign an illegal contract with the Respondents, who are not the representatives of the Petitioner's employees, and such scheme thus based wholly on fraud, falsehood and misrepresentation, is causing the Petitioner irreparable injury.*

(d) Because the picketing of Petitioner's place of business by the Respondents *is causing irreparable injury to the Petitioner and its employees, in that Respondents seek to force the Petitioner to join with them by giving an illegal contract to the union, in order to deny to the Petitioner's employees the rights guaranteed to them by §12 of the Bill of Rights of the Constitution of the State of Florida.* The *employment of this force denies to the Petitioner's em-* [fol. 307] *ployees the right to work;* it *is unlawfully causing Petitioner irreparable injury.*

Wherefore, Petitioner prays this Honorable Court issue its Writ of Certiorari quashing the order of the Circuit Court and prays that this Honorable Court will grant to the Petitioner forthwith a Constitutional Writ enjoining the Respondents from maintaining the pickets at the Petitioner's place of business.

/s/ Weldon G. Starry, Sibley & Davis, Attorneys for Petitioner. By: /s/ Marion E. Sibley, of counsel.

[fol. 309]

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1955
SPECIAL DIVISION A.

CASE NO. 26,197

BOCA RATON CLUB, INC., a Florida corporation, and HILDEMART CORPORATION, a Florida corporation, Petitioners,

—v.—

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

CASE NO. 26,198

SORRENTO HOTEL CORP., a Florida corporation, Petitioner,

—v.—

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

CASE NO. 26,199

HARRY LEVY, MARK ALLEN LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURGH CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER and SALLY KRONE, HARRY A. LEVY, Irrevocable Trust, MINNIE GINSBERG, JEROME GRANGER, doing business as the SHERRY FRONTENAC HOTEL, Petitioners,

—v.—

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agent and Officers thereof, Respondents.

[fol. 310]

CASE No. 26,200

LEEVLANDS CORPORATION, Petitioner,

—v.—

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

CASE No. 26,201

MONTE CARLO, INC., Petitioner,

—v.—

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

CASE No. 26,202

2500 COLLINS AVENUE CORPORATION, a Florida corporation, Petitioner,

—v.—

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

An Appeal from the Circuit Court for Dade County, Robert L. Floyd, and Grady L. Crawford, Judges.

Sibley & Davis, Weldon G. Starry, and Thos. H. Barkdull, for Petitioners.

Fuller Warren, Warren, Klein & Moore, Gramling & Gramling and J. W. Brown, for Respondents.

[fol. 311]

OPINION, PER CURIAM—Filed June 1, 1955

The foregoing cases are similar to Sax Enterprises, Inc., vs. Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, decided May 27, 1955. These cases were combined and heard together in the lower court. Application for temporary injunction was denied after evidence in each case. The reason for denial was that the "plaintiff has not made a sufficient showing for relief on the basis of the manner of the picketing and the method in which it is being conducted." The court further found that "defendants not having filed answers or other pleadings to the complaint, the allegation or contention made by the plaintiff that the picketing is conducted for an unlawful or illegal purpose is not considered nor passed upon, but determination of this question is reversed until final hearing."

On authority of Sax Enterprises, Inc., vs. Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, decided May 27, 1955, certiorari is granted as to that part of the Chancellor's order in each of said causes which deferred ruling upon the question whether or not the picketing was being carried on for an unlawful purpose, and each of said causes is remanded to the Circuit Court with directions to enter a temporary restraining order therein.

It is so ordered.

Drew, C.J., Terrell, Sebring and Hobson, J.J., concur.

[fol. 313]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM A. D. 1955

LEEVLANDS CORPORATION, Petitioner,

—v.—

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

JUDGMENT—June 1, 1955

Counsel for Petitioner having filed in this cause Petition for Writ of Certiorari and having been duly considered it is ordered by the Court that the said petition be and the same is hereby granted as to that part of the Chancellor's order in each of said causes which deferred ruling upon the question whether or not the picketing was being carried on for an unlawful purpose, and each of said causes is remanded to the Circuit Court with directions to enter a temporary restraining order therein; it is further ordered by the Court that the Petitioner do have and recover of and from the Respondents their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

[fol. 315]

IN THE SUPREME COURT OF FLORIDA

JUNE TERM, A. D. 1955

LEEVLANDS CORPORATION, Petitioner,

—v.—

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

ORDER TREATING PETITION FOR CERTIORARI AS SUPERSEDEAS—June 24, 1955

Upon an inspection of a certified transcript of record brought here upon an application for an order of supersedeas in the above-styled cause, it is hereby ordered that the Petition for Writ of Certiorari filed in this Court in said cause on May 16th, 1955, shall have the force and effect of and do operate as a supersedeas of the order or decree sought to be reviewed upon such Petition upon the Petitioner giving or causing to be given a bond in the sum of $5000.00, conditioned to pay all costs, damages and expenses occasioned by reason of the stay of proceedings in the event the order or judgment of which review is sought is not quashed, modified or reversed, said bond to be approved by the Clerk of the Circuit Court for Dade County.

[fol. 327]

IN THE SUPREME COURT OF FLORIDA
JUNE TERM, A. D. 1955

EN BANC.

CASE No. 26,197

BOCA RATON CLUB, INC., a Florida corporation, and HILDEMART CORPORATION, a Florida corporation, Petitioners,

—v.—

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

CASE No. 26,198

SORRENTO HOTEL CORP., a Florida corporation, Petitioner,

—v.—

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

CASE No. 26,199

HARRY LEVY, MARK ALLEN LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURGH CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER and SALLY KRONE, HARRY A. LEVY, Irrevocable Trust, MINNIE GINSBERG, JEROME GRANGER, doing business as the SHERRY FRONTENAC HOTEL, Petitioners,

—v.—

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

[fol. 328]

CASE No. 26,200

LEEVLANDS CORPORATION, Petitioner,

—v.—

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

CASE No. 26,201

MONTE CARLO, INC., Petitioner,

—v.—

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

CASE No. 26,202

2500 COLLINS AVENUE CORPORATION, a Florida corporation, Petitioner,

—v.—

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

Writs of Certiorari to the Circuit Court for Dade County, Robert L. Floyd and Grady L. Crawford, Judges.

W. G. Starry and Sibley & Davis, for Petitioners.

J. Carrington Gramling, Warren, Klein & Moore and J. W. Brown, for Respondents.

[fol. 329]

OPINION—Filed October 19, 1955

Hobson, J.:

In *Sax Enterprises* v. *Hotel Employees Union Local No. 255*, 80 So. 2d 602, we decided a prior aspect of the matter which the cases now under consideration bring before this court. In the *Sax* case we held on the basis of the showing made that it was error to deny a temporary restraining order against the picketing of the Saxony Hotel. The injunctive relief which was granted as a result of our mandates in the *Sax* case and in the instant cases related to picketing and the publicity measures used by the defendants-respondent union in connection therewith. Subsequently defensive pleadings were filed and further testimony taken upon motions of the respondents to dissolve and vacate the temporary injunctions issued pursuant to the mandates of this court. The chancellors below have issued orders of identical effect in all of these cases, granting the motions and dissolving and vacating the temporary injunctions.

Although the parties have attempted to present a multitude of issues in these cases, we are of the view that the only issues really involved are whether (1) the respondent union complied with the prerequisites to lawful picketing outlined in our opinion in the *Sax* case, supra, and (2) whether the picketing was for a lawful or unlawful purpose.

The chancellors found in substance that before the picketing commenced, the union did in fact represent some of the employees although less than a majority; that the union informed the petitioners of its desire to engage in negotiations, and that the petitioners used evasive tactics amounting to a refusal to negotiate or bargain. No one of the chancellors, however, made a finding that the union had, prior to the picketing, established by evidence of substantial character that any of the employees had chosen it as their representative.

[fol. 330] Respondents contend that: the findings which were made are supported by competent substantial evidence; such findings in effect established the truth of the message contained in the cards which were displayed by

the pickets, and which we reproduced in the *Sax* case, supra; the matter thus resolves itself into a situation where peaceful picketing has been carried on with the objective of accurately publishing the facts of a labor dispute, which is a lawful purpose within the doctrine of *Whitehead* v. *Miami Laundry Co.*, Fla., 36 So. 2d 382, and *Johnson* v. *White Swan Laundry, Inc.*, 41 So. 2d 874.

Petitioners take the position that the respondent union failed to prove compliance with the prerequisite to lawful picketing set forth in the *Sax* opinion, of establishing "that the employees have chosen it as their representative."

In our opinion in the *Sax* case we said:

> "Without doubt a labor organization has the right to engage in peaceful picketing of an employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union as the representative of such employer's employees. In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative, Treasure, Inc., v. Hotel & Restaurant Employees and Bartenders' Union, supra, and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations. See North East Texas Motor Lines, Inc., v. Dickson, 148 Tex. 35, 219 S. W. 2d 795."

[fol. 331] Respondents say that the above pronouncements were nothing more than obiter dicta and that in any event they run counter to the established law of this jurisdiction. They cite our opinion in *Hotel & Restaurant Employees' & Bartenders' Union Local No. 156, A. F. of L.* v. *Cothron, et al.*, 59 So. 2d 366, from which we quote:

> "It appears that the Chancellor either misconstrued or misapplied the law to the facts as he found them in entering the injunction. The Chancellor stated that 'Complainants should have been advised of the reasons for the impending picketing and given an opportunity to remedy the cause as they saw fit.' This was no reason to grant an injunction in this case. There is no

> rule, regulation, or law of this State which requires a notice to the employer of the reasons for an impending strike, as a prerequisite to picketing, and the Courts are without power to supply such rule, regulation or law. The advisability or necessity for such is for legislative determination and not for the courts."

We fact (sic) this contention of respondents forthrightly. Our opinion in the *Cothron* case does indeed appear to be contrary to our statement in the *Sax* case, supra, to the effect that as a prerequisite to lawful picketing "the labor organization must also inform the employer of the object to be accomplished by the picketing'. It might be said that the underlying reason for our ruling in the *Cothron* case [fol. 332] is a sound basis for recanting our pronouncement as to the other two prerequisites to lawful picketing outlined in the *Sax* opinion. We have given careful consideration to the apparent conflict between these two cases and have concluded that although there may exist "no rule, regulation or law of this State which requires" the foregoing prerequisites to lawful picketing, certainly honesty of purpose, fair dealing and a sound public policy demand them. Moreover, Sec. 447.03 F.S., grants unto *employees* the right to "*self* organization" (Italics supplied) and "to bargain *collectively* through representatives of *their own choosing*" (Italics supplied). It seems clear that before being required to enter into negotiations with an alleged bargaining agent an employer should be shown by evidence of substantial character that his employees, or at least some of them, have voluntarily exercised the rights accorded them by our statute. Hence, we deem it appropriate for the courts to fix reasonable and fair prerequisites to the end that, rather than economic strife, there may exist peaceful accord of labor disputes so necessary in the interest of the common weal.

The placards displayed by the pickets carried the following words: "This hotel refused to negotiate with the Hotel Employees Union, Local #255, American Federation of Labor, 1575 Washington Avenue, Miami Beach". This language unquestionably connotes to the "common mind" a compliance with all prerequisites to lawful picketing, i.e.,

a pre-existing honest and forthright attempt to bring about negotiations between an authorized bargaining agent and the employer because of a bona fide labor dispute between [fol. 333] employees and employer and a fair opportunity to engage in negotiations. It is clear that such an opportunity cannot be said to exist until and unless the employer is first assured by evidence of substantial character that if he negotiates he will do so with an authorized bargaining agent. The words on the placards "refused to negotiate" necessarily presuppose an opportunity to negotiate. Surely no one can doubt that such opportunity should be a "fair" opportunity. The placards did not speak the truth in all its stark significance or give to the public actual facts concerning a labor dispute. Indeed, so far as this record shows petitioners, except for the uncorroborated representations of a putative bargaining agent, never, prior to the most recent hearing in the circuit court, knew as a matter of fact that their employees were actually dissatisfied and had, because of such dissatisfaction, designated the respondent and their bargaining agent. It follows, as night the day, that without such knowledge they could not know that a labor dispute existed nor, indeed, would a labor dispute normally come into being without some dissatisfaction on the part of the employees. No dispute of any kind or character can exist unless the parties said to be involved know that there is actually disagreement between them.

Moreover, it is the duty of the employer to treat only with the employees' true representative and the unsupported statement of a labor organizer is an insufficient showing to justify the employer in dealing with the alleged bargaining agent. In *Texarkana Bus Co.* v. *National Labor Relations Board*, 119 F. 2d 480, the court stated, and we quote with approval:

> "The employer can not be required to devote his time to negotiating with every individual claiming to repre- [fol. 334] sent a bargaining unit, and can not be charged with unfair practice in this regard unless there is presented to him evidence of a substantial character showing that the representative is in fact an authorized bargaining agency."

Although the court was there dealing with the National Labor Relations Act which *does not* "require an employer to bargain collectively with a union which has not been designated by a majority of the employees in an appropriate unit" (italics supplied), nevertheless the rationale of the opinion is (sic) that case is equally applicable here. This is so because there is no rule, regulation or law of this State of which we are cognizant which requires an employer to bargain collectively with a union which has not been designated by at least some of the employees in an appropriate unit. The Circuit Court of Appeals of the Eighth Circuit in the last cited case said, and we again quote with approval:

> "As the employer must act at his peril in recognizing a representative, common prudence dictates that he refrain from acting until satisfactory proof is produced that the representative in fact speaks for a majority of the employees."
> 119 F. 2d 480, 484.

It is deemed appropriate to observe that we have outlined *prerequisites* to lawful picketing and it is not sufficient to establish even in court, after picketing is a reality that the putative bargaining agent had in fact, prior to picketing, been so designated by an insignificant number or, for that matter, a majority of the employer's employees.
[fol. 335] We hold herein that as prerequisites to lawful picketing the union must establish by some evidence of substantial character that at least some of the employees have chosen it as their representative and "afford to the employer a fair opportunity to engage in negotiations", any pronouncement in the *Cothron* case to the contrary notwithstanding. We might add that we deem it necessary in order to afford to the employer a fair opportunity to engage in negotiations that the labor organization inform the employer of the subjects intended for negotiation.

The picketing of petitioners' places of business by the respondent union under the facts and circumstances of these cases and upon the basis that petitioners refused to negotiate with the union is the unlawful use of economic pressure to coerce the petitioners into negotiations

with an alleged agent who failed and refused as required by law and just dealing timely and appropriately to establish his authority. Hence the picketing is for an unlawful purpose.

Respondents, however, say the petitioners knew that certain organizers, particularly the respondent Mr. David Herman, had attempted to persuade the employees to designate respondent union as their bargaining agent or to join the union, as is evidenced by the fact that the employers endeavored to dissuade the employees from taking either action. Such circumstance falls far short of establishing as a matter of fact that the employees had pursued either course and it assuredly does not prove that the employers knew that the employees, or any of them, had actually so designated the union or had joined it.

[fol. 336] This record paints a picture not of employees exercising their right to "self-organization" or their right to "bargain collectively through representatives of their own choosing" but, on the contrary, limns one of two labor organizers coming to Miami Beach early this year, organizing a local labor union, and attempting for a perior (sic) of two to three months, as they had every right to do, to persuade petitioners' employees that they were not being treated fairly in the matter of hours, wages and conditions of work, and that they should therefore designate the union as their bargaining agent or join the union or do both. After failing to so persuade no more than an insignificant number of such employees that they were being treated unfairly, as is established by the designation cards introduced in evidence, they immediately resorted to the use of the coercive effect of picketing without either of them first establishing by any evidence substantial in character that the respondent union in truth and in fact had been designated as the bargaining agent of any employees of the petitioner. Thereafter these men, who cannot be said to have given the employers a fair opportunity to negotiate since they gave said employers no substantial evidence of the union's authority to represent any of the employees, arranged for and had the picket lines thrown up for the obvious purpose of forcing the employers to cause their

employees to designate the union as their bargaining agent and perhaps to join the union. That picketing carried on under such circumstances is unlawful cannot be gainsaid. It falls within the "unlawful purpose" doctrine of *Miami Typrgraphical* (sic) *Union* v. *Ormerod,* 61 So. 2d 753.

[fol. 337] We hold that the picketing in these cases was begun by respondents without first having submitted to the petitioners competent substantial evidence of their authority as alleged bargaining agents, which caused the picketing to be unlawful, and that the picketing was carried on for an unlawful purpose.

We do not deem it necessary to determine the applicability in these cases of Sec. 447.09 (3) Florida Statutes or its constitutionality.

The petitions for certiorari should be granted and the challenged orders quashed.

It is so ordered.

Drew, C.J., Terrell and Sebring, JJ., concur.

[fol. 339]

IN THE SUPREME COURT OF FLORIDA

JUNE TERM A. D. 1955

WEDNESDAY, OCTOBER 19, A. D. 1955

LEEVLANDS CORPORATION, Petitioner,

—v.—

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

Counsel for Petitioner having filed in this cause Petition for Writ of Certiorari and having been duly considered, it is ordered by the Court that the said petition be and the same is hereby granted and the challenged orders quashed; it is further ordered by the Court that the Petitioner do have and recover of and from the Respondents

their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

Gwyte P. McCord, Clerk Supreme Court.

[fol. 342]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 178,667-I

LEEVLANS CORP., Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.) et al., Defendants.

STIPULATION RE SUPPLEMENTAL ANSWER—
Filed February 27, 1956

It Is Stipulated by and between counsel for respective parties that the Supplemental Answer attached hereto was filed on June 28, 1955 and was apparently misfiled but for the purposes of the Record On Appeal the said Supplemental Answer shall be deemed and considered as having been filed June 28, 1955 as a predicate for the affidavit of Clarence Smith attached to the Stipulation re Final Hearing.

Witness our hands at Miami, Dade County, Florida this 24th day of February, 1956.

Sibley & Davis, Attorneys for Plaintiff, /s/ Marion E. Sibley.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, /s/ Carrington Gramling.

[fol. 343]

SUPPLEMENTAL ANSWER

Come Now the defendants and make this their Supplemental Answer and would respectfully show unto this Honorable Court that this Court is without jurisdiction to act in the cause for the reason that the plaintiffs in operation of said hotel are engaged in a business which affects inter-state commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state buslines, inter-state and international steamship companies and by passenger automobiles.

Said business further is part of "package deal" arrangements with said various inter-state and international airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Trans-World Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular & Occidental Steamship Company, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coast Line Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-
[fol. 344] state bus line companies including Greyhound Bus Line Company, Trailways Bus System and various other inter-state bus line companies. Said "package deal" arrangements are arrangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an inte-

gral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by plaintiffs and said inter-state carriers. All expenses incurred in promoting, making and consummating said inter-state and international sales are jointly shared by plaintiffs and said inter-state and international carriers. The proceeds of said inter-state and international sales are divided between plaintiffs as operator of said hotel and said interstate and international carriers.

Said plaintiffs, as a part of the operation of said hotel, purchase numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said plaintiffs as a part of the operation of said hotel sell directly outside of the State of Florida and within the State of Florida for carriage or resale outside of the State of Florida.

Said plaintiffs as part of the operation of said hotel advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the states of the United States outside of the State of Florida and in various countries outside of the United States.

Plaintiffs as part of the operation of said hotel have on said premises various shops and services engaged in inter-state commerce including Western Union Telegraph services, numerous travel agencies, transportation offices for airlines, steamship lines, railroad companies and bus lines, inter-state stock exchange branches, inter-state chain drug stores, inter-state clothing stores and other inter-state retail stores.

Defendants further state that said hotel is part of a multi-state chain, said entire chain being engaged in inter-state commerce, so that labor disputes at plaintiffs' hotel affects inter-state commerce.

Defendants further state that the Congress of the United States has by legislative enactment under the Constitution of the United States, occupied the fields as to all matters complained of in the petition of plaintiffs and this [fol. 345] State Court has no jurisdiction to act in the

premises wherefore the said cause should be dismissed for lack of jurisdiction.

Gramling & Gramling, J. W. Brown, Ben Gettler, by /s/ Carrington Gramling, 224 Shoreland Building, Miami, Florida, Solicitors for Defendants.

Certificate of service (omitted in printing).

[fol. 346]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 178667

LEEVLANS CORP., Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, (A. F. of L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

STIPULATION RE FINAL HEARING—November 30, 1955

It Is Stipulated by and between counsel for the respective parties that all testimony and other evidence heretofore introduced in this cause be and the same is hereby reaffirmed for the purpose of Final Hearing, with the single addition however, that at said Final Hearing, the defendants would produce Clarence Smith as a witness, who would testify according to affidavit attached hereto, and it is

Stipulated that said testimony would be objected to on the grounds that said testimony is immaterial and irrelevant; and it is

Stipulated that this testimony and the objections thereto be submitted to the Chancellor for ruling thereon, and in the event the objection is sustained, the affidavit shall re-

main as part of the record as a proffer, and all objections as to form of such proffer be and they are hereby waived.

It Is Further stipulated that Final Decree be entered by the Chancellor upon the record as now made in the light of this Stipulation.

[fol. 347] Witness our hands at Miami, Dade County, Florida this 30 day of November, 1955.

Sibley & Davis, Attorneys for Plaintiff, by /s/ Marion E. Sibley.

J. W. Brown & Gramling & Gramling, Attorneys for Defendants, by /s/ Carrington Gramling.

[fol. 348]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 178667

LEEVLANS CORP., Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255, (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

AFFIDAVIT OF CLARENCE SMITH FOR DEFENDANTS

Personally appeared before me the undersigned authority Clarence Smith, who being by me first duly sworn deposes and says as follows:

"My name is Clarence Smith, and I am Business Agent of HOTEL EMPLOYEES UNION, Local 255. That plaintiffs, in the operation of their hotel are engaged in a business which affects interstate commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various

states of the United States outside of Florida, and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state bus lines, inter-state and international steamship companies, and by passenger automobiles. Said business further is part of "package deal" Arrangements with said various inter-state and International airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Trans-world Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular and Occidental Steamship Companies, [fol. 349] Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coastline Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus lines companies including Greyhound Bus Lines Company, Trailways Bus System and various other inter-state bus line companies. Said "package deals" arrangements are arangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an intergral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by Plaintiffs and said inter-state carriers. All expense incurred in promoting, making and consummating said inter-state and inter-national sales are jointly shared by Plaintiffs, and said interstate and international carriers. The proceeds of said inter-state and inter-national sales are divided between Plaintiff, as operator of said hotel and said inter-state and international carriers; said sales of Plaintiff in inter-state commerce exceed in volume amount sufficient to establish jurisdiction of National Labor Relations Board under its rules and regulations.

Said plaintiffs, as a part of the operation of said hotel, purchases numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said Plaintiffs, as a part of the operation of said hotel, sell directly outside of the State of Florida and within the State of Florida for carriage of re-sale, outside of the State of Florida. Said plaintiffs as part of the operation of said hotel, advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the states of the United States out-
[fol. 350] side the State of Florida and in various countries outside of the United States.

FURTHER AFFIANT SAYETH NOT.

/s/ Clarence L. Smith, Affiant.

Sworn to and subscribed before me this 15 day of November, 1955.

/s/ Silvia R. Lathero, Notary Public, State of Florida at Large, My Commission Expires; August 20, 1959.

(SEAL)

[fol. 352]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 178,667

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v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

FINAL DECREE AND ORDER ON MANDATE—November 30, 1955

LEEVLANS CORP., Plaintiff,

This Cause coming on to be heard upon application for an order on mandate and upon final hearing pursuant to the Stipulation of the parties to this cause, and it appearing to the Court that the defendants proffered the affidavit of Clarence Smith as evidence upon this final hearing, and plaintiff objected to said affidavit on the ground that the same is immaterial and irrelevant, and the Court sustains the objection thereto upon said grounds. The Court having considered the entire record in this cause, including the testimony taken before the Court, and the Court being fully advised in the premises.

It Is thereupon ordered, adjudged and decreed that in compliance with the opinion, judgment and mandate of the Supreme Court of Florida, the order granting motion to vacate injunction, which order is recorded in Chancery Order Book 1189, at Page 593, in the records of the Clerk of the Circuit Court of Dade County, Florida, be and the [fol. 353] same is hereby vacated and set aside. The preliminary injunction granted by the order of this Court on June 2, 1955, which preliminary injunctive order is recorded in Chancery Order Book 1187, at Page 411, in the records of the Clerk of the Circuit Court of Dade County, Florida, be and the same is hereby reinstated and the said preliminary injunction shall bind the defendants with the same

force and effect as if the said order of dissolution had not been rendered.

It Is further ordered, adjudged and decreed that the said preliminary injunction be and the same is hereby made permanent. The injunction bond filed herein is hereby cancelled and the principal and surety released of all liability thereunder. The costs of this cause hereby assessed in the sum of $354.66 are taxed against the defendants, for which let execution issue.

Done and Ordered in Chambers at Miami, Florida, this 30 day of November 1955.

/s/ J. Fritz Gordon, Circuit Judge.

[fol. 355]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 178,667

LEEVLANS CORP., Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL #255 (A. F. of L.), et al., Defendants.

ASSIGNMENTS OF ERROR

Come now the defendants by their undersigned solicitors and make the following assignment of error as the errors which they intend to reply upon in the Supreme Court of Florida, for a reversal of the Order (or Final Decree) made herein on the 30th day of November, 1955, and recorded in Chancery Order Book 1214, page 242 of the records of this Court, from which they have appealed:

1. The Court erred in enjoining the defendants in peaceful picketing the business place of the complainants, whereby your defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly, and the

right to work or refrain from working as guaranteed within the meaning and scope of Sections I, XII, XIII, XVII and XIX Declaration of Rights, Constitution of the State of Florida, and Amendments I, V, XIII and XIV of the Constitution of the United States of America.

2. The Court erred (in and by such final decree) in finding that the defendants should have established to the satisfaction of the employer, that the employees had chosen defendant Union as their representative and further requiring that the labor organization must also inform the employer of the object to be accomplished by picketing and afford an unwilling or hostile employer an unspecified period within which to engage in negotiations, all as a pre-[fol. 356] requisite to right to strike and picket, whereby your defendants and the Union members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments I, V, XIII and XIV of the Constitution of the United States of America.

3. The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

5. The Court erred (in and by such final decree) in enjoining peaceful picketing and the dissemination of information predicated upon an unsubstantiated finding of fact, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

6. The Court erred in requiring a direct employer-employee relationship as a prerequisite in picketing and as a prerequisite to publicizing the existence of a labor dispute, contrary to Amendments I and XIV of the Constitution of the United States of America.

7. The Court erred (in and by such final decree) in permanently enjoining peaceful picketing and the publicizing of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefor, and beyond the scope of any finding of fact insubstantial or otherwise, thereby depriving the members of this Union [fol. 357] the guarantees of Amendments I and XIV of the Constitution of the United States.

8. The Court erred (in and by said final decree) in assessing costs against the defendants.

J. W. Brown, Gramling & Gramling, Solicitors for Defendants, By Carrington Gramling.

[fol. 360] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 362]

IN THE SUPREME COURT OF FLORIDA
January Term, A. D. 1957—Division B.

Case No. 28,244

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al.,
Appellants,

v.

LEEVLANS CORP., Appellee.

An Appeal from the Circuit Court for Dade County, J. Fritz Gordon, Judge.

J. W. Brown and Gramling & Gramling, for Appellants.
Sibley & Davis and Thomas H. Barkdull, Jr., for Appellee.

OPINION, PER CURIAM—Filed March 15, 1957

Affirmed on authority of Fontainebleau Hotel Corp. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., opinion filed February 1, 1957.

Terrell, C.J., Hobson, Drew and O'Connell, JJ., Concur.

[fol. 364]

IN THE SUPREME COURT OF FLORIDA
January Term, A. D. 1957—Division B.

Case No. 28,244

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al.,
Appellants,

—vs—

LEEVLANS CORP.,/Appellee.

JUDGMENT—March 15, 1957

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellees do have and recover of and from the Appellants their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

[fol. 372] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. A]

IN THE SUPREME COURT OF FLORIDA

Case No. 28,236

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), et al., Appellants,

—vs—

R. S. LEVY, DANIEL LIFTER and J. S. LANSBURGH, as Trustee, etc. et al., Appellees.

Transcript of Record—Filed April 5, 1956

J. W. Brown and Gramling & Gramling, 226 Shoreland Building, Miami, Florida, Attorneys for Appellants.

Patton & Kanner, 213 Shoreland Building, Miami, Florida, Attorneys for Appellees.

[fol. 1]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

ON PETITION FOR CERTIORARI FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

CHANCERY ACTION No. 180588-I

R. S. LEVY, DANIEL LIFTER; and J. J. LANSBURGH, as Trustee for THE ELLEN LANSBURGH TRUST, THE MORRIS LANSBURGH, JR. TRUST and THE LEONARD LANSBURGH TRUST, Plaintiffs.

vs.

HOTEL EMPLOYEES UNION, LOCAL No. 255, of the AMERICAN FEDERATION OF LABOR, and DAVID HERMAN, CLARENCE L. SMITH, ALBERT H. BERLIN and HENRY K. MICHEL, individually and as business agents and officers thereof, Defendants.

[fol. 1A] COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF—Filed June 15, 1955

To the Honorable Judges of the Above Styled Court in Chancery Sitting:

Come now the Plaintiffs, R. S. Levy; Daniel Lifter; and J. J. Lansburgh, as Trustee for The Ellen Lansburgh Trust, The Morris Lansburgh, Jr. Trust and The Leonard Lansburgh Trust, by their undersigned attorneys, Sibley & Davis and Patton & Kanner, and bring this their bill of complaint for injunctive and other relief against the Defendants, Hotel Employees Union, Local No. 255, of the American Federation of Labor, and David Herman, Clarence L. Smith, Albert H. Berlin and Henry K. Michel, individually and as business agents and officers thereof, and allege:

1. That the Defendant, Hotel Employees Union, Local No. 255 of the American Federation of Labor, is a labor organization within the intent and purview of the laws of the State of Florida. That the Defendants, David Herman, Clarence L. Smith, Albert H. Berlin and Henry K. Michel, are each residents of Dade County, Florida, and are each over the age of twenty-one years, and that the said Defendants, David Herman, Clarence L. Smith, Albert H. Berlin and Henry K. Michel, and each of them, are duly authorized [fol. 2] business agents and officers of the Defendant, Hotel Employees Union, Local No. 255.

2. That the Plaintiffs, R. S. Levy; Daniel Lifter; and J. J. Lansburgh, as Trustee for The Ellen Lansburgh Trust, The Morris Lansburgh, Jr. Trust and The Leonard Lansburgh Trust, are the owners of a leasehold interest in the Versailles Hotel and Cabana Club, the same being located at 3425 Collins Avenue, Miami Beach, Florida. That the Plaintiffs operate the said Versailles Hotel under and by virtue of the terms and conditions of a lease indenture, under which they are obligated to pay a rental of $141,000.00 a year to the owner of the fee simple title upon which the said hotel is situated, to wit, Liflans Corp., a Florida corporation. That under and by virtue of the terms and conditions of said lease indenture the Plaintiffs have a security deposit of $50,000.00 posted with the Lessor, Liflans Corp., to guaran-

tee all of the lessee obligations under the terms and conditions of the lease. That the Versailles Hotel is a first-class, deluxe, luxury hotel located on the shores of the Atlantic Ocean in the City of Miami Beach, Florida, in the heart of the hotel district commonly known as "King's Row". That the Versailles Hotel is a multiple-storied building consisting of 144 rooms, as well as dining rooms, card rooms, lobbies, sitting rooms, cocktail lounges and a cabana club. That the said premises are well known and recognized throughout the world as a first-class luxury resort hotel. That the [fol. 3] reputation, character and facilities of the Versailles Hotel have been widely publicized and are well known throughout the world as those of a first-class luxury resort hotel, catering to travelers, residents, tourists and vacationers from the world-over. That there is operated in conjunction with the Versailles Hotel a cabana club consisting of 15 cabanas, a swimming pool and luxurious public space, said cabana club being managed and operated by the Plaintiffs in connection with and as an adjunct of the Versailles Hotel. That the value of the Plaintiffs' leasehold interest is in excess of $1,500,000.00 and as such is a valuable asset. That if the Plaintiffs are unable to continue the rental payments which they are obligated to pay, the security deposit of $50,000.00 hereinabove alleged will be jeopardized under the terms and conditions of the lease indenture under which these Plaintiffs operate the Versailles Hotel. That the Plaintiffs in the operation of the Versailles Hotel and its facilities employ 95 employees. That the said Plaintiffs operate the Versailles Hotel and its facilities throughout the entire year and in such operation have accepted and confirmed reservations from guests, who anticipate the use of the hotel and its facilities throughout a period of time in excess of six months from the date of the filing of this complaint. That the individuals who have reservations at the Versailles Hotel are relying upon and anticipating the use of its facilities for which they have confirmed reservations.

[fol. 4] 3. That as reflected by the payroll of the Versailles Hotel on June 11, 1955, the Plaintiffs employed 95 employees who rendered services as waiters, bell boys, maids, elevator operators and telephone operators, and other similar duties

normally required to operate and maintain a hotel of the character and nature as that of the Versailles Hotel hereinabove described. That the Plaintiffs in their operation of the Versailles Hotel have not had and do not now have any labor labor (sic) dispute with their employees with regard to wages, working conditions or any other phase of employee-employer relationship, but, on the contrary, the said Plaintiffs have enjoyed the most cordial labor relations with their employees and have at all times afforded their employees a satisfactory standard of pay, hours of work, and working conditions. That the Plaintiffs have received no complaints from their employees with reference to wages, hours or working conditions, and are wholly and completely without any knowledge of any labor dispute of any kind or nature whatsoever existing between them and their employees. That more than a majority of Plaintiffs' employees are non-members of the defendant union and that more than a majority of the Plaintiffs' employees have no desire to join the defendant union. That the defendant union does not represent a majority of the said Plaintiffs' employees.

4. That the defendants, in order to create for their own use and benefit a lucrative labor organization, organized [fol. 5] the Defendant, Hotel Employees Union, Local No. 255 of the American Federation of Labor. That the Defendants have used the said defendant labor organization as an instrumentality to instigate and create labor disputes between the Plaintiffs and their employees, and among other hotels and employees. That the defendant labor organization and the individual agents and officers herein named as defendants have attempted to solicit the employees of the Versailles Hotel to become members of the defendant labor organization, and in such solicitation have used devices and means contrary to the laws of the State of Florida. That the said defendants, in order to carry out its illegal purposes, have intimidated, coerced and threatened the Plaintiffs and their employees. That the Defendants have attempted to obtain recognition as a bargaining agent for the employees of the Versailles Hotel, although not in fact representing a majority of the employees of the Versailles Hotel. That the defendant union professes to represent a

small minority of the Versailles Hotel's employees and has established and set up a device of picketing the Versailles Hotel in order to force the recognition of the defendant as a bargaining agent of the Versailles Hotel employees. That the picketing engaged in by the defendants is contrary to the laws of the State of Florida in that such picketing is carried on in an intimidating and threatening manner and is set in a background of coercion and violence, and in addition thereto is calculated to carry out an illegal purpose, [fol. 6] that of forcing the Plaintiffs to recognize the defendants as bargaining agents for employees which the defendants do not represent. That the actions of the defendant union to organize the employees of the Versailles Hotel have been unsuccessful and that, as hereinabove alleged, the picketing now engaged in is set in a background of coercion and intimidation. That the defendants have threatened the employees of the Versailles Hotel with the loss of their positions if they did not join the union. That such threats have been directed toward the employees of the Versailles Hotel in an effort to force such employees to join the defendant union. That the defendant union, in its effort to organize the employees of the Versailles Hotel, has stated that the union would be successful in organizing the employees and that when the union "took over" it would cause all employees not belonging to the union to be discharged. That such statements are not only coercive and intimidating, but are a direct manifestation of the union's attempt to obtain a "closed shop".

5. That the Plaintiffs do not have a contract with the defendant union and the defendant union does not represent a majority of the employees of the Versailles Hotel, but, notwithstanding that the defendant union does not represent a majority of the employees of the Versailles Hotel, the said defendants have attempted to have the said plaintiffs recognize the defendant union as the bar- [fol. 7] gaining agent of the hotel's employees. That the defendants have set upon an illegal course of action in order to solicit membership in its union among the employees of the Versailles Hotel. That the Defendants on many occasions have caused their agents and organizers to come in and upon the premises of the Versailles Hotel

soliciting the hotel's employees to become members in the union while said employees were at work. That in so doing the defendants, through their agents and organizers, have molested, coerced, intimidated and threatened the employees of the Versailles Hotel, and have disrupted the work being done by the employees of the Versailles Hotel.

6. That as hereinabove alleged the defendant union does not represent a majority of the employees of the Versailles Hotel, but notwithstanding such fact the defendants have attempted to force the Plaintiffs into recognizing the defendant union as a collective bargaining agent for the Versailles Hotel employees. That the Plaintiffs designated Marion E. Sibley, an attorney at law, as the bargaining agent for the Versailles Hotel, and authorized him to meet with the defendant, David Herman, one of the defendant union's organizers. That a conference was held on May 20, 1955, in the office of Marion E. Sibley, at which there were present Marion E. Sibley, the Plaintiff, Daniel Lifter, the Defendant David Herman, and one Brown, attorney for the defendant. That at the said (sic) the Plaintiffs, through their duly [fol. 8] designated agent, Marion E. Sibley, offered to negotiate with the defendant, if the defendants established that they represented a majority of the employees of the Versailles Hotel. That the defendants refused to furnish any list of employees and refused to submit any proof whatsoever that they represented a majority or any employees of the Versailles Hotel. That the Plaintiffs then, acting through their agent, Marion E. Sibley, suggested a formula for ascertaining whether or not the defendants represented a majority of the employees of the Versailles Hotel. That the Defendants, and particularly David Herman, requested that he be permitted to take the suggestion of the Plaintiffs' agent, Marion E. Sibley, under consideration, and a further conference was set to be held in the office of Marion E. Sibley on Monday, May 23, 1955. That the defendants did not keep the appointment established but, on the contrary, totally and completely ignored the conference which was set, and the Plaintiffs heard no more from the defendants until a communication, dated June 6, 1955, which was addressed to Morris Lansburgh, Versailles Hotel, by David Herman, was received, a copy of said communication being

attached hereto as Plaintiffs' Exhibit "A" and made a part hereof as if fully set out herein. That accompanying said communication attached hereto as Exhibit "A" was a request to settle grievances and complaints, a copy of the same being attached hereto as Plaintiffs' Exhibit "B" and made a part hereof as if fully set out herein. That also accompanying [fol. 9] said communication attached hereto as Exhibit "A" was a certification of Paul J. Weiss, a copy of the same being attached hereto as Plaintiff's Exhibit "C" and made a part hereof as if fully set out herein, in which certification the individual Paul J. Weiss, designating himself as a certified public accountant, certifies that from the examination of the union's records that 59 of "your employees" are members of Local 255. That upon the receipt of the communication attached hereto as Exhibit "A", the Plaintiffs acting through Morris Lansburgh, addressed a communication to the defendants, again requesting that the defendants furnish the Plaintiffs with a list of employees whom the defendant professed to represent, together with trustworthy proof that such employees had designated the defendant union as their collective bargaining agent, a copy of such communication being attached hereto as Plaintiffs' Exhibit "D" and made a part hereof as if fully set out herein. That the defendant union has at all times refused to furnish the Plaintiffs with the names of any employees whom it claims to represent and has at all times refused and failed to present to the Plaintiffs, or any duly authorized agent of the Plaintiffs, truthworthy, satisfactory, or any kind of proof that it represented a majority or any employees of the Versailles Hotel. That, on the contrary, instead of furnishing the names of employees and proof of the union's designation as a collective bargaining agent, the defendant union established a picket line at the Versailles Hotel on June 11, 1955. That the request for settlement of grievances [fol. 10] and complaints attached hereto as Exhibit "B", is erroneous and false in that it is not the grievances and complaints of the employees of the Versailles Hotel. That the certification attached hereto as Exhibit "C" is erroneous and false in that Plaintiffs know of their own knowledge that a majority of the employees of the Versailles Hotel are not members of the defendant union and have not designated

the defendant union as a collective bargaining agent, and are not desirous of becoming affiliated with the defendant union. That the Plaintiffs have never at any time refused to negotiate or bargain with the defendants, but have at all times required and requested the defendants to satisfactorily establish and prove the defendant union's designation as bargaining agent for employees it professed to represent, but the names of whom they refused to reveal. That in furtherance of the illegal purposes of the defendant union as hereinabove alleged, the defendant union carried out the threat of its communication of June 6, 1955, in that the defendant caused pickets to be placed in front of the Versailles Hotel on June 11, 1955. That said picketing has been carried on continuously in front of the approaches and environs of the Versailles Hotel. That four or more pickets are parading in front of the Versailles Hotel carrying placards or signs stating: "This hotel refuses to negotiate with Hotel Employees Union, Local #255, American Federation of Labor, 1575 Washington Avenue, Miami Beach". That the aforesaid picketing is illegal and in viola-
[fol. 11] tion of the laws of the State of Florida in that the defendant union does not represent a majority of the employees of the Plaintiffs, and that a majority of the employees of the Plaintiffs has not designated the defendant as a bargaining agent. That the illegal picketing set in motion by the defendant union is designed to coerce the Plaintiffs into recognizing the defendant union as a collective bargaining agent for the employees of the Versailles Hotel, which employees the defendant union does not represent. That the defendants are using the picket line it established to falsely publicize a non-existent labor dispute.

7. That the defendant union has set up a course of action and conduct which it has directed towards the Plaintiffs' hotel and other hotels similarly situated in the City of Miami Beach, Florida, designed and calculated to force the Plaintiffs and operators of other hotels to recognize the defendant union as the collective bargaining agent for employees that the defendant does not represent and which the defendant seeks to represent, contrary to the will and desire of such employees.

That the defendant union by its actions has imposed economic sanctions upon the Plaintiffs and operators of other hotels in order to illegally achieve their purpose. That the conduct and actions of the defendant are an overall design directed towards all hotels within the City of Miami [fol. 12] Beach, Florida, to bring about a recognition of the defendant union by all the hotels as the collective bargaining agent for all hotel employees, notwithstanding the fact that as hereinabove alleged, the defendant union does not represent such employees or that such employees have not designated the defendant union as a bargaining agent.

That for a period of sixty days, the defendant has caused illegal strikes and walk-outs to be called in violation of the statutes of the State of Florida at numerous hotels in the City of Miami Beach, Florida. That the defendant, in violation of the statutes of the State of Florida, has engaged in picketing for illegal purposes at the Plaintiffs' hotel, the Versailles Hotel, and at many other hotels in the City of Miami Beach, Florida. That the defendants have widely publicized their activities throughout the United States by newspaper advertisements and otherwise, indicating and directing the public's attention to the hotels where illegal strikes and walkouts have been called and where illegal picketing is being conducted, falsely publicizing a disruption of service at such hotels. That such publicity is designed and calculated by the defendants to deter guests who have reservations and prospective guests from visiting or coming to hotels in which illegal strikes have been called or where illegal picketing is being conducted. That the defendants, in picketing the Versailles Hotel, have subjected it and incorporated it as a part of their overall de- [fol. 13] sign to deter guests from coming to the Versailles Hotel by falsely publicizing a non-existent labor dispute and directing attention to the presence of pickets which the defendants publicize as in indication of the disruption of service. That in order to maintain and enforce the economic sanctions above referred to, the defendants have caused additional hotels to be illegally picketed as fast as their illegal picketing of other hotels has been enjoined, thus constantly maintaining a vehicle to attract the attention to their libelous and false publications.

That the defendants have engaged in vandalism and violence in other hotels which they have picketed. That all of the hotels located in the City of Miami Beach are in close proximity to each other and the pickets used by the defendants have congregated along the entire area where the hotels are situated so as to subject all of the hotels to the effect of the picketing being conducted at individual hotels. That the actions of the defendants, as hereinabove alleged, are designed and calculated to disseminate false information as to the services available in the Plaintiffs' hotel and other hotels, to publicize the presence of a picket line, to indicate illegal or non-existent strikes, and thus to induce both a voluntary and involuntary boycott of the Plaintiffs' hotel and other hotels. That the actions of the defendants are contrary to the expressed desire of the ma- [fol. 14] jority of the Plaintiffs' employees and that the actions of the defendants will prevent the operation of the Versailles Hotel by the Plaintiffs and thus affect the employment of employees who are not members of the union and who do not wish to have the union represent them.

That as late as June 5, 1955, the defendants, acting in conspiracy with their associates and affiliates of the American Federation of Labor, caused to be published in the Boston Sunday Herald an advertisement, a photostatic copy of which is attached hereto as Plaintiffs' Exhibit "E" and made a part hereof as if fully set out herein. That the said advertisement attached hereto as Exhibit "C" falsely and libelously publicizes the existence of strikes at twelve hotels located in the City of Miami Beach, Florida. That in the instance of each hotel named in said advertisement injunction orders were entered restraining and enjoining any strike, but, notwithstanding the existence of such injunctive orders, the defendants, as hereinabove alleged, falsely publicized the existence of a strike.

That the defendants, acting in conspiracy with associates and affiliates of the American Federation of Labor, have caused to be publicized over various radio stations falsely and libelously non-existent labor disputes at various hotels in the City of Miami Beach, Florida. That said radio advertisements have gone so far as to give to the general public a telephone number, to wit: Circle 5-7000 New York City,

[fol. 15] inviting the public to call said number to ascertain the conditions existing in the City of Miami Beach, Florida, relative to services available in hotels in the City of Miami Beach, Florida. That when such telephone number is called false and libelous information is disseminated. That all callers are advised that strikes are in existence at each hotel in the City of Miami Beach, Florida where picket lines formerly existed and were enjoined and where picket lines presently exist. That prospective guests and individuals calling the aforesaid number have been advised that a strike is in existence at the Versailles Hotel.

8. That the defendants, individually and collectively, are engaged in actions which are in violation of the laws of the State of Florida and the Constitution of the State of Florida in that the said defendants are attempting by their actions hereinabove alleged to

(a) Be designated the collective bargaining agent for employees they do not represent.

(b) To deny the employees of the Versailles Hotel the right to work because they are not members of the defendant union.

(c) Establish a picket line for an illegal purpose.

(d) Falsely publicize a non-existent labor dispute.

[fol. 16] 9. That the defendants have never provided the Plaintiffs with proof that the defendant union represents a majority of the Plaintiffs' employees, or which employees, if any, the defendants in fact do represent. That on the contrary, the Plaintiffs have been apprised by a majority of their employees that the defendant union does not represent them and that a majority of said employees do not desire to have the defendant union represent them. That the defendant union, through its unlawful conduct, seeks to force the Plaintiffs to execute a contract with it in order that the defendant union might use such contract to coerce and force the plaintiffs' employees to become members of the defendant union.

10. That the actions of the defendant union as hereinabove alleged are instigated by the defendant union and

calculated to force the Plaintiffs to recognize the defendant union as a collective bargaining agent for employees of the Versailles hotel notwithstanding the fact that the said union does not represent a majority of the employees of the Versailles Hotel, and in truth and in fact is not the collective bargaining agent of said employees. That the defendant union is well aware of this and notwithstanding such knowledge the defendants, through their actions hereinabove alleged, seek to impose economic sanctions against the Plaintiffs and Plaintiffs' employees by forcing [fol. 17] employees of the Versailles Hotel, which the union does not represent, to become members of the defendant union; to falsely establish that a strike or labor dispute is in progress at the Versailles Hotel and to lead the public to believe that the usual service available at the Versailles Hotel is no longer available in view of the picketing. That by reason of all this the Plaintiffs are suffering irreparable damage and harm. That if the illegal actions of the defendant union are allowed to continue, Plaintiffs will be unable to continue the operation of the hotel, to meet their commitments to guests for which they have received advance reservations, and that the Plaintiffs will be unable to meet their rental obligations and will thus place in jeopardy their valuable assets, their leasehold interest in the Versailles Hotel, and in addition thereto will be forced to forfeit their security deposit of $50,000.00, which guarantees their performance of the lease indenture. That if the actions of the Defendant union, as hereinabove alleged, are allowed to continue a majority of the employees of the Versailles Hotel will be denied the right to work, a right guaranteed to them by the Constitution of the State of Florida. That unless the Defendant union, its agents, officers, members and organizers are enjoined from picketing or engaging in any illegal activities against the Plaintiffs and the Plaintiffs' employees, the Plaintiffs and their employees will suffer irreparable harm, damage and injury. That unless [fol. 18] such injunction is given without notice, for the reason that to require such notice would defeat the purpose for which the injunction is sought, the Plaintiffs and the Plaintiffs' employees will suffer irreparable damage, injury and harm.

Forasmuch, therefore, as the Plaintiffs are without remedy, save in a court of equity, Plaintiffs pray that this Court will take jurisdiction of the parties and the subject matter hereof, and that the Defendants may be required to make answer, but not under oath, answer under oath being waived.

Plaintiffs further pray that this Court will, pending final hearing of this cause, grant a preliminary and temporary injunction restraining the defendants, their officers, agents, organizers, or anyone in conspiracy with them, from attempting to call a strike, from calling a strike, and from picketing in and about the premises of the Plaintiffs, or in the vicinity of the Versailles Hotel. Plaintiffs pray for the entry of such preliminary and temporary injunction as hereinabove requested without notice to the defendants for the reason that to require such notice would defeat the purposes for which the injunction is sought. That unless such temporary restraining order is entered forthwith the property of the Plaintiffs, as well as the Plaintiffs themselves, will be subjected to further irreparable injury and damage which will be brought about by the defendants. That this Court will in said order grant such further and other relief as to the Court may be deemed necessary and [fol. 19] proper in the premises, and that this Court will, upon final hearing, cause said restraining order or injunction to be made permanent.

The Plaintiffs further pray that the Court will, upon final hearing, grant to the Plaintiffs such other and further relief as to the Court may seem meet and proper.

R. S. Levy: Daniel Lifter: and J. J. Lansburgh, as Trustee for the Ellen Langsburgh Trust, the Morris Lansburgh, Jr. Trust and The Leonard Lansburgh Trust. By /s/ Daniel Lifter, Plaintiffs.

Sibley & Davis, Patton & Kanner, Attorneys for Plaintiffs. By /s/ Samuel J. Kanner, Of counsel, 213 Shoreland Building, Miami, Florida.

Duly sworn to by Daniel Lifter, jurat omitted in printing.

[fol. 20]

PLAINTIFFS' EXHIBIT "A" TO COMPLAINT

HOTEL EMPLOYEES UNION
Local 255
Miami Miami Beach
1575 Washington Avenue
Miami Beach, Florida

A.F. of L.

Embracing all classification of Hotel workers in the Miami-Miami Beach area

Phone 58-0539

Affiliated with Hotel and Restaurant Employees and Bartenders International Union—Florida Fed. of Labor
Florida Culinary Alliance
Dade County Central Labor Union

[fol. 21]

June 6, 1955

Mr. Morris Lansburgh
Hotel Versailles
3425 Collins Ave.
Miami Beach, Fla.

This is to advise you that the Hotel Employees Union, Local #255, represents a substantial number of your employees. A certification by a Certified Public Accountant, duly licensed by the State of Florida, certifying to that fact is enclosed herewith.

Those employees of yours who are represented by this local Union, have certain grievances and complaints. In order to settle those grievances and complaints, we are making certain requests to you, on their behalf. Those requests are contained in the document enclosed herewith, entitled "Requests to settle grievances and complaints."

Will you please meet with the undersigned representative to settle these grievances and complaints through negotiation and upon such settlement, to reduce such settlement to writing and duly execute the same.

In the event you desire, we will be willing to submit any or all of these complaints, grievances and requests to a mutually satisfactory arbitrator or if we are unable to agree to a mutually satisfactory arbitrator, to an arbitrator designated and selected by the American Arbitration Association, with both parties abiding by the rulings of such arbitrator.

[fol. 22] Under no circumstances, do we desire or would we accept any type of contract or agreement which would either expressly or by implication force your employees to designate this Union or any organization or individual, as their bargaining agent, or which would in anyway compel your employees to become members of this Union or any other organization.

Unless we hear from you in the affirmative by June 11, 1955 we shall understand that you do not wish to meet with us or to adjust these differences. We shall then feel free to take whatever action will protect the interest of our members, including publicizing the facts and picketing.

Very truly yours,

/s/ David Herman
David Herman
Director of Organization
Hotel Employees Union Local #255

PLAINTIFFS' EXHIBIT "B" TO COMPLAINT

HOTEL EMPLOYEES UNION

Local 255

Miami Miami Beach
1575 Washington Avenue
Miami Beach, Florida

A.F. of L.

Embracing all classification of Hotel workers in the Miami-Miami Beach area

Phone 58-0539

Affiliated with
Hotel and Restaurant Employees and Bartenders International Union
Florida Fed. of Labor
Florida Culinary Alliance
Dade County Central Labor Union

[fol. 23] Requests to Settle Grievances and Complaints

1. Increase minimum wage to the legal Federal minimum of 75¢ per hour with a proportionate increase for all those receiving more than 75¢ per hours.
2. Reduce the work week to the legal federal maximum of 5 days, 40 hours per week, with time and one half for all hours in excess of the Federal Maximum.
3. Provide for weekly payment of wages instead of the present semi-monthly payment.
4. Establish a welfare program that will provide for Hospitalization, Medical and Surgical care.
5. Eliminate the practice of kick-back between and among employees such as bellman, waiters, waitresses and bell Captains, superintendents of service and head waiters wherever such practice exists.
6. Establish a procedure for the adjustment of grievances that may develop in the future as a part of employer-employee relationship.
7. Establish seniority rules.

8. Provide annual vacations with pay based upon a schedule of one week vacation for each year of employment with a maximum of three weeks.

9. Provide for time off on those Holidays that are legally recognized in the State of Florida.

In Union There Is Strength—Organize the Un-Organized

[fol. 24]

Plaintiffs' Exhibit "C" to Complaint

Certification

Paul J. Weiss, being first duly sworn, disposes and states as follows:

The undersigned, Paul J. Weiss, residing at 3720 Poinciana Avenue, Miami, Florida is a duly register voter in Dade County, Florida and has resided in Dade County, Florida since 1923. Paul J. Weiss is a certified public account, duly licensed by the state of Florida and has practiced the profession of accounting for more than 30 years.

The undersigned has at the request of Miami Hotel Employees Union, Local #255, examined the records of Local #255, to determine its claim that certain employees of your Hotel are members of Local #255 and have designated local #255, as their collective bargaining agent. The examination of those records reveals that 59 of your employees are members of Local #255 and have duly designated Local #255 as their collective bargaining agent.

/s/ Paul J. Weiss

Sworn to and subscribed before me this 6th day of June 1955

/s/ J. M. Schutter
Notary Public, State of Florida at large
My commission expires: October 9, 1957

[fol. 25]

PLAINTIFFS' EXHIBIT "D" TO COMPLAINT

June 11, 1955

Mr. David Herman
Director of Organization
Hotel Employees Union Local 255
1575 Washington Avenue
Miama Beach, Florida

Dear Mr. Herman:

Upon receipt of the names of the employees you claim to represent, together with trustworthy proof that such employees have designated your Union to represent them, we shall communicate with you regarding this matter.

Very truly yours,
THE VERSAILLES HOTEL
By
Morris Lansburgh

ML:hr

[fol. 26]

PLAINTIFFS' EXHIBIT "E" TO COMPLAINT

MIAMI BEACH

HOTEL EMPLOYEES ON STRIKE FOR RIGHT TO BARGAIN

Since April 13 there have been picket lines around a number of hotels in Miami Beach, Florida.

Starting with two hotels, the strike has grown and is still growing.

As of today, union employees of these 12 hotels are on strike:

RONEY PLAZA	EMPRESS	SAXONY
ALGIERS	LOMBARDY	SEA ISLE
CASABLANCA	MONTE CARLO	SHERRY FRONTENAC
DI LIDO	SANS SOUCI	SORRENTO

The Miami Beach hotel employees walked out to win one simple right, a right guaranteed by the law of the land.

They want the right to bargain collectively with their employers.

The employers refuse to recognize the union the workers established to improve their working conditions.

Both the AFL and the CIO support the Miami Beach hotel employees in their struggle for their fundamental rights as Americans. Together, the two national labor organizations represent 15,000,000 organized workers.

We and the union hotel employees who serve the guests in hotels would appreciate your support of these employees' right to organize.

BOSTON LOCAL JOINT EXECUTIVE BOARD
Hotel and Restaurant Employees and
Bartenders International Union, AFL
George H. Donovan, Sec.-Treas.

[fol. 27]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

ANSWER—Filed July 6, 1955

Come Now the Defendants and make this their Answer to the Complaint and answering, say:

1. That they admit the identity of the parties hereto as alleged in Paragraph 1.

2. That they are without knowledge as to the matters and things set forth in Paragraph 2, but aver that if the said hotel enjoys a fine reputation and valuable good will that such asset has been created in large measure by the excellence of performance by the many employees of said hotel while said employees are yet not recognized by the plaintiff through their duly designated representative of their own choosing, to-wit: Hotel Employees' Union Local No. 255; and that the purpose of this instant litigation is to deprive the said employees who have contributed so richly to the success of plaintiff hotel of their constitutional and statutory guarantees of being represented for collective

bargaining purposes by representatives of their own choosing.

3. Defendants aver that the Plaintiffs employ approximately seventy employees coming within the jurisdiction of the defendant union. Defendants deny the remaining allegations of Paragraph 3 of the Complaint and would [fol. 28] aver that the employees of plaintiffs' hotel have long been dissatisfied with their wages, working conditions and other phases of the employer-employee labor relationship and aver that Plaintiff has suffered a large turnover in the employees because of the sub-standard rate of pay, working conditions, adjustment of grievances and other inter-related factors; and would aver that the many complaints on the part of the employees have been properly brought to the representatives of their own choosing as guaranteed by law, to-wit: Hotel Employees' Union Local No. 255, A. F. of L.; but that Plaintiff Hotel has at all times refused to negotiate or settle the many differences and grievances existing and under which the employees are now suffering.

4. Defendants deny each and every of the material allegations of Paragraph 4 as though each such allegation was herein set forth and separately and categorically denied.

5. Defendants deny each and every of the material allegations of Paragraph 5 and to the contrary aver that they have never at any time attempted to gain recognition on behalf of employees who are not members of the Defendant Union.

6. These Defendants deny each and every of the material allegations of Paragraph 6 of the Complaint other than the act of the picketing and the wording of the placards or signs, as fully and completely as though each such material allegation were herein at this point separately and severally repeated and each such allegation severally and [fol. 29] categorically denied. And your Defendants herein at this point adopt and set forth as answer to Paragraph 6 the Affidavit of Dave Herman, which is attached hereto and made a part hereof, as though herein at this

point set forth in haec verba. And in addition to the aforesaid Affidavit, your Defendants would further state that they did request Mr. Paul J. Weiss, certified public accountant of the State of Florida, to examine the books and records of Defendant Union to ascertain to his own satisfaction the number of employees of the Plaintiffs, who have designated Defendant Union as their bargaining agent, and who are members of Defendant Union. That said Paul J. Weiss, Certified public accountant, did on the 6th day of June 1955, determine such facts and did certify that fifty-nine employees of Plaintiffs were members of Local No. 255 and have designated Local No. 255 as their collective bargaining agent. Such certification was duly sworn to and certified before a Notary Public of the State of Florida.

Defendants further aver that an executed and notarized copy of such certification was delivered to the Plaintiffs on the 6th day of June 1955, together with a letter duly signed by David Herman, as Director of Organization of Defendant Union, advising Plaintiffs that Defendant Union represents a substantial number of Plaintiffs' employees as shown by the above referred to certification. Said letter further advised Plaintiffs that such employees represented by Defendant Union have certain grievances and com- [fol. 30] plaints. Said letter further had attached to it a list of "requests to settle grievances and complaints". Said letter further requested Plaintiffs to meet with a representative of the employees of Plaintiffs who had designated Local No. 255 as their bargaining agent to settle such grievances and complaints. Plaintiffs were further advised by such letter that in the event they desired, such grievances and complaints would be submitted to a mutually satisfactory arbitrator or to an arbitrator designated and selected by the American Arbitration Association, with both parties to abide by the rules of such arbitrator.

Plaintiffs were advised that under no circumstances did Defendant Union desire or would Defendant accept any type of contract or agreement which would either expressly or by implication force Plaintiffs' employees to designate Defendant Union or any organization or any individual as the bargaining agent of its employees or which would in

any way compel Plaintiffs' employees to become members of Defendant Union or any other organization.

Plaintiffs were further advised that unless Plaintiffs agreed by some affirmative response by June 11th, 1955, it would be understood that Plaintiffs did not wish to meet to negotiate or adjust the differences between the parties.

Plaintiffs were further advised that in the event of negative response or no response that Defendant Union [fol. 31] would then feel free to take whatever action that would protect the interest of its members, including publicizing the facts and picketing. A true and exact copy of such letter dated June 6, 1955, together with certification of Paul J. Weiss, Certified public accountant and list of requests to settle grievances and complaint, are attached hereto and made a part hereof as fully as if set forth in their entirety herein.

Defendants further state that they did receive a certain letter dated June 11, 1955, signed by Plaintiff, Morris Lansburgh on behalf of Versailles Hotel setting forth that "Upon receipt of the names of the employees you claim to represent, together with trustworthy proof that said employees have designated your Union to represent them, we shall communicate with you regarding this matter".

Defendants further state that such reply was not made in good faith in that the certification referred to above by a certified public accountant of the State of Florida had been previously sent and that a list of the names of the employees who are members of Defendant Union, was an unreasonable, arbitrary and capricious demand made solely for the purpose of assisting the Plaintiffs in retaliatory discrimination against the said union member-employees.

Defendants further state that such certification by a certified public accountant of the State of Florida is certainly trustworthy proof concerning the designation by [fol. 32] its employees; and no other method has ever been suggested by Plaintiffs.

Defendants further state that said letter of June 11, 1955, was not an affirmative response to the said letter of Defendant Union dated June 6, 1955, in that Plaintiffs while demanding additional proof regarding the designation

by their employees, did not agree or affirmatively state that they would negotiate provided such new demands were met. On the contrary, Plaintiffs stated merely that if such demands were met they would "communicate" with Defendant Union. It is obvious, therefore, that Plaintiffs are continuing to "stall" and have adopted the hypocritical attitude that they doubt the union representation, notwithstanding the direct representations made to Plaintiffs and the common knowledge of the entire community, of which this Court may now take judicial knowledge. Defendants deny each and every material allegation of Paragraph 6 not specifically admitted herein, as though each such allegation was herein set forth and separately and categorically denied.

7. Defendants deny each and every of the material allegations, if any, of Paragraph 7 as fully and completely as though each such allegation was herein set forth separately and each separately and categorically denied, excepting, however, that these Defendants aver that Plaintiff, in unison with many of the other hotels of the City of Miami Beach, Florida, has set upon a calculated course to deprive the employees in the hotel industry of Miami Beach [fol. 33] of their constitutional and statutory guarantees of freedom of speech, the right to bargain collectively with their employer through representation of their own choosing and to hold in peonage the working people in the hotel industry and that Plaintiff has entered into a conspiracy with the other hotels of Miami Beach, which are members of the Miami Beach Hotel Association, to deprive the employees of the hotel industry of their rights as aforesaid and as overt acts of said conspiracy, your Defendants would show that these Plaintiffs in concert with the other members of the Hotel Owners' Association are blacklisting union members through the hotel industry and in the Versailles Hotel, coercing and intimidating other hotel employers to refuse to deal with Defendant Union, notwithstanding the representation by this Defendant Union of such employers' employees, by intimidating, coercing and threatening other employers with reprisals in the event that such other employers recognize, negotiate or enter into any contract with Defendant Union, notwithstanding

the representation by this Defendant Union of such employers' employees.

Defendants deny that they have engaged in vandalism and violence in other hotels which have been picketed and would show that no vandalism or violence has been shown in any of the litigation that is now pending in the several divisions of the Circuit Court of the Eleventh Judicial Circuit or otherwise; and defendants deny each and every of the remaining material allegations in Paragraph 7.

[fol. 34] 8. Defendants deny each and every of the material allegations of Paragraph 8 as fully and completely as though each such allegation were herein at this point set forth and separately and categorically denied.

9. Defendants deny Paragraph 9 of the complaint and would show to the contrary that a majority of the employees within the jurisdiction of this Union belong to Defendant Union and have designated it their bargaining agent and that a certificate by a certified public accountant has been duly served upon Plaintiffs, revealing the fact that the records of the Union showing that fifty-nine of the employees of Plaintiff have so designated the Union their bargaining agent and notwithstanding service of this finding by a certified public accountant together with a request to negotiate on behalf of such employees, as is more particularly set forth in Exhibits 1 and 2 attached hereto and made a part hereof as though herein at this point set forth in haec verba, the Plaintiff has unlawfully and willfully refused to confer or agree to negotiate or otherwise recognize the lawful bargaining agent of its employees and is thereby unlawfully depriving them of the representation guaranteed to them by the Statutes of the State of Florida.

10. Defendants deny each and every of the material allegations of Paragraph 10 as fully and completely as though each such allegation were herein at this point set [fol. 35] forth and each separately and categorically denied.

11. And your Defendants would show that the Plaintiff seeks to maintain this litigation in a court of equity and good conscience with unclean hands, for that the Plaintiff

has denied to its many employees the statutory and constitutional guarantees of representation and collective bargaining as afore set forth and are endeavoring to frustrate and to bring to naught the provisions of the aforesaid statutory constitutional clauses and enactments, contrary to equity and good conscience.

That your Defendant Union as the spokesman and representative of its members who are employed by Plaintiff, has long sought to bring about negotiations and the Plaintiff has failed and refused to respond to the invitations and solicitations of this Defendant Union, acting on behalf of its members and that the picketing became necessary in order to appeal to the friends and sympathizers of the members of Defendant Union who are employed by Plaintiff, as aforesaid; that in the utmost of good faith, your Defendant Union has invited Plaintiff to hold an election by secret ballot under any fair and impartial authority and by such secret ballot, demonstrate to Plaintiff the bonafides of Defendant Union's assertion concerning representations.

That Plaintiff seeks to deprive these defendants and the members of Defendant Union of the constitutional guarantee of freedom of speech, as provided for in Article [fol. 36] 1 and 14 Bill of Rights, Constitution of the United States of America and the similar provisions of the Declaration of Rights of the Constitution of the State of Florida, and the guarantee of Chapters 447.03 and 447.13 Laws of the State of Florida.

And Defendants would respectfully show unto this Honorable Court that the allegations of the complaint and the prayer for relief in said complaint predicated upon the allegations therein seek only to deprive your defendants of their constitutional guarantees of freedom of speech and to impose upon the individual members of the Defendant Union an involuntary servitude contrary to the provisions of the 1st, 13th and 14th Amendments of the Constitution of the United States of America. Granting the prayer of Plaintiff's petition would result in abridging and depriving of these defendants and each and every member of Defendant Union and each and every person enjoined of his or her Constitutional right to speak freely his opinions

and to communicate facts and to refrain from working individually or in concert with others, contrary to the aforesaid Constitutional provisions. Defendants further state that in the event the provisions of any Statute of the State of Florida are applied to the facts of this instant cause so as to grant the relief prayed for by the Plaintiffs, the same would result in denying to these Plaintiffs, all members of the Defendant Union, and all other persons enjoined the guarantees of the Constitution of the United [fol. 37] States and of the Constitution of the State of Florida, as aforesaid.

Wherefore, your Defendant Union prays this Honorable Court that should this Honorable Court desire to ascertain the fact of the representation by Defendant Union through the process of the Court, that a Commissioner be appointed to hold an election among the Plaintiffs' employees, to ascertain and report to this Honorable Court the truth and accuracy of the statements in Plaintiffs' petition as to the representation by Defendant Union of employees of Plaintiffs and that this Honorable Court enter its Declaratory Decree, declaring this Union to be in fact the duly authorized representative of the majority of Plaintiffs' employees within the jurisdiction of Defendant Union, and that upon judicial ascertainment and Declaratory Decree, that this Honorable Court by its mandatory injunction, require the Plaintiff to negotiate and bargain in good faith with this Union on behalf of the members of the Union, who are the employees of Plaintiffs, as is contemplated by Chapter 447 of the Laws of the State of Florida, together with Section 12 of the Bill of Rights, Constitution of the State of Florida and to deny the relief sought in the original complaint.

Gramling & Gramling, J. W. Brown, Ben Gettler, Solicitors for Defendants. By: /s/ Carrington Gramling, 224 Shoreland Building, Miami, Florida.

[fol. 38] *Duly sworn to by Clarence L. Smith, jurat omitted in printing.*

Affidavit of David Herman

State of Florida,
County of Dade, *ss.*:

Before Me, the undersigned authority, this day personally [fol. 39] appeared David Herman, residing at the Eastview Hotel, Miami Beach, Florida of full age, who, after being by me first duly sworn, upon his oath deposes and says:

I am Director of Organization of Hotel Employees' Union, Local 255, and have been in this position since on or about February 15, 1955. During the course of my duties as Director of Organization I have received many complaints from employees of the Versailles Hotel concerning the deplorable wages and working conditions existing at the Hotel. These deplorable conditions included a 7-day week, 12-hour day, no compensation for overtime, no job security, low wages and many others. On the basis of the many conversations with employees of the Versailles Hotel, I know that there are approximately seventy-five regular, steady employees, excluding management and management-associated employees, working within the jurisdiction of Local 255. As a result of these conditions, fifty-nine of the approximately seventy-five employees of the Versailles Hotel authorized Hotel Employees' Local No. 255 to represent them for the purpose of collective bargaining.

Eighteen (18) of said employees have signed application cards, have paid their initial fees and dues in full, and Union membership books have been issued to them. The applications of said eighteen employees are attached to this affidavit and made a part hereof as fully as if set forth herein.

[fol. 40] Approximately thirty-six additional employees of the Versailles Hotel have signed identical application cards and said application cards are being processed by Defendant Union, and union books have not as yet been issued.

Forty-three employees of the Versailles Hotel have signed white cards stating, "I hereby designate Hotel Employees Union, Local No. 255 as my collective bargaining agent. I request the Union to negotiate on my behalf with my em-

ployer on all matters dealing with wages, hours and conditions of employment". Said forty-three cards are attached hereto and made a part hereof.

Sixteen additional employees of the Versailles Hotel have signed yellow cards, stating as follows: "I, ..., an employee of the Versailles Hotel do hereby designate the Miami Hotel Trades Council, consisting of affiliates of the American Federation of Labor with jurisdiction over the respective crafts, unions and industrial unions in the hotels of Miami and Miami Beach, to be my duly authorized collective bargaining agent on all matters pertaining to my wages, hours and conditions of employment". Said sixteen cards are herewith attached and made a part hereof. The Miami Hotel Trades Council referred to therein includes the Defendant Union, Hotel Employees' Union, Local No. 255, and a designation of said Miami Hotel Trades Council by an individual employee of the hotel working within the jurisdiction of Local No. 255 is a designation of Local 255 [fol. 41] by such employee to represent him or her for the purpose of collective bargaining. Each of the persons who signed the said cards submitted herewith are working within the jurisdiction of Local No. 255.

As a Director of Organization for Local No. 255, I am in charge of keeping and have custody of all applications for membership referred to above, as well as all designation cards referred to above. The cards and applications attached hereto and made a part hereof are part of the official records of Local No. 255.

When I first assumed my duties as Director of Organization I learned from the records of Local No. 255, and by being advised by various spokesmen for the Miami Beach Hotel Association, that the Miami Beach Hotel Association represented this Plaintiff Hotel among others, for the purpose of labor relations and dealings with any labor organizations. After I assumed my duties as Director of Organization and up to the present date, I have been similarly advised by various hotel owners as to the truth of the aforesaid statement. I was further advised as to the representation of Plaintiff Hotel by the Miami Beach Hotel Association by my attorney, J. Carrington Gramling, who exhibited to me the ruling of the Honorable George E. Holt in Chan-

cery Cause No. 121214 wherein Morris Lansburgh and the Miami Beach Hotel Owners Association were Defendants, in which order the various hotels of Miami Beach, who were [fol. 42] members of the Association, were enjoined, as members of the Association from blacklisting and indulging in other unfair labor practices, which order judicially recognized Hotel Owners Association as a proper party for the purpose of enjoining its member hotels in labor matters, after the taking of testimony. The Miami Beach Hotel Owners Association referred to in said Case #121214 is the same and identical association referred to herein as Miami Beach Hotel Association.

I first contacted Plaintiff by contacting their representative, the executive president of Miami Beach Hotel Association, Mr. Sam Rivkind, who was also the executive president of the Association at the time of the entry of the order by Honorable George E. Holt, against the Association, as aforesaid. Such contact was on March 3, 1955 by direct conversation with the said Mr. Rivkind. I discussed with Mr. Rivkind the desires of the employees of the various member hotels of the Association to be represented in all labor-employer relation matters by Local 255, and the desires of said employees to improve their wages, hours and working conditions. Mr. Rivkind advised me that he would discuss with the Board of Directors of the Hotel Association and the owners of the various hotels involved, including Plaintiff herein, the advisability of a conference for the purpose of working out an orderly procedure whereby defendant Union would be able to extablish (sic) its right to bargain collectively on behalf of its members employed [fol. 43] in the various hotels, including Plaintiff Hotel, based upon a secret ballot. Mr. Rivkind stated that he would endeavor to bring about a meeting between myself and such other representatives of the Union as would be designated, and a representative committee from the Hotel Association.

I next met with Mr. Rivkind on or about the 6th or 7th day of March, 1955. He advised me that he had revealed our previous conversation to a number of the members of the Miami Beach Hotel Association, including Plaintiff; that he, however, was withdrawing from the executive presi-

dency of the Association and that I should therefore continue any discussions with the President of the Association, Mr. Saul Cohen.

I met with Mr. Saul Cohen on March 20, 1955. We discussed the problem of the recognition by the Association of its members of Local 255 as the representative of Hotel Employees Union who had designated Local 255 as their collective bargaining agent. We further discussed the possibility of improving the working conditions and standards of said employees represented by Local No. 255, increasing their wages, reducing their hours, and other matters of that specific nature. There was no decision made at that conference.

I again met with Mr. Saul Cohen on March 23, 1955. We discussed the same general problems that were discussed in the meeting of March 20, 1955. I pointed out to [fol. 44] Mr. Cohen the low wages, long hours and other unfavorable working conditions which existed in the various hotels, including Plaintiff Hotel, and advised him that it was our purpose to endeavor to improve those conditions for the persons who were represented by Local 255. It was generally agreed between us that the standards in said hotels, including Plaintiff hotel, were very low. We discussed the example of representation of employees in New York City, whereby over a period of seventeen years through a process of orderly collective bargaining, conditions had been increased multifold since 1937. I pointed out to Mr. Cohen that in New York City, although the hotel industry from the point of view of numbers of employees and number of rooms is equivalent to Miami Beach, that there has not been a serious strike, work stoppage or cessation of work in all of the time that the Union has been organized and that on the contrary, the hotel industry there was prospering simultaneously with the improvement of the conditions of the hotel employees. I also pointed out to Mr. Cohen that in every hotel where we claimed a majority, we would be willing and happy to go through an election to determine and establish that fact. I also advised him that in the event of disputes between Local 255 and the hotels, including Plaintiff hotel, we would be willing in each case

to submit such dispute to an impartial arbitrator to be mutually agreed upon by both parties.

Mr. Cohen replied:

> [fol. 45] "You know I can't disagree with anything you say and I wish we had hotel owners in Miami Beach. We have got pants pressers, dressmakers, everything except hotel owners, and if I come to them with any kind of proposition like that, they will think I am crazy. They will think I am working for the Union instead of being the President of the Hotel Association".

Mr. Cohen requested that I write a letter to the Secretary of the Association asking for a meeting. In accordance with the aforesaid suggestion, I wrote such a letter on behalf of Local 255; and I further advised Mr. Cohen, during the course of that conversation, that Local 255 represented a substantial number of employees of the hotels, including Plaintiff Hotel: in fact, I claimed that we represented a majority, which in fact we do. My statements in regard to representation were not questioned in any way. On the contrary, such representations were accepted by him.

I did not receive a reply to the letter sent to the Association referred to above; therefore, on April 10, 1955, I had published, by paid advertising in each of the three major Miami newspapers, a copy of said latter (sic). However, I have never received to this very day, any reply whatsoever to the said letter or to the said ad.

A copy of said letter was sent to these Plaintiffs on March [fol. 46] 30, 1955.

That on or about the 3d day of May, 1955, I sent a telegram to Morris Lansburgh to the Versailles Hotel, requesting a meeting to negotiate on behalf of the employees represented by Local No. 255. I received an answer from the Versailles Hotel over the signature of Morris Lansburgh suggesting a meeting in the office of Marion E. Sibley on May 12, 1955. That on or about May 10, 1955, I had a meeting with Morris Lansburgh, who advised me that he was compelled to be out of the city during the course of the next several days and suggested that our meeting scheduled for May 12th be postponed until May 20th. I asked him to write to me to that effect and that I would take the matter up

with the employees of the Versailles Hotel. After receiving the letter and taking it up with the employees of the Versailles Hotel, members of Hotel Employees Union Local No. 255, I telephoned Mr. Morris Lansburgh and told him that it was agreeable to the employees to have a conference on May 20th instead of May 12th. On or about May 18, 1955, I had lunch with Mr. Morris Lansburgh and Mr. Daniel Lifter, Plaintiffs herein, where we discussed the conference scheduled for May 20th in the offices of Mr. Marion E. Sibley. In the light of a previous conference that was held with Mr. Marion E. Sibley involving a Plaintiff Hotel, which conference resulted in a walk-out on the part of the employees of that hotel, Messrs. Lansburgh and Lifter asked [fol. 47] me to refrain (sic) arriving at any specific conclusion during the conference with Mr. Sibley so as not to break it off with the possible resultant walk-out of the employees in the Versailles Hotel, but rather to try and postpone the final conclusion during that conference in the hope that Messrs. Lansburgh and Lifter will then meet with us and try to work out a method for recognition of the Union and negotiation of the employees' just grievances. I then met again with Mr. Morris Lansburgh and Mr. Daniel Lifter in the offices of Marion E. Sibley on May 20, 1955 and in accordance with our previous discussion, there were two alternate plans advances (sic) for establishing Local No. 255 as a collective bargaining agent on behalf of the Versailles Hotel employees, who were members of the Union.

One plan advanced by Mr. Sibley was to the effect that the employees of the Versailles Hotel, each and every one of them, appear before Mr. Darry Davis, who is a partner of Mr. Sibley and Mr. J. W. Brown, counsel herein, and these employees would singly and individually be questioned as to whether or not they are members of the Hotel Employees Union Local No. 255 and/or whether they designated Local No. 255 as their collective bargaining agent. This plan was rejected by me as being an invasion of the employees' right of privacy in matters of choosing a collective bargaining agency. I advanced the alternate proposal that we follow the established practices of the National Labor Relations [fol. 48] Board and the several State Labor Relations Board methods, which is also the method adopted for the demo-

cratic determination of any and all matters within a free society, for the determination of various questions, which consists of a secret ballot election supervised by an impartial party.

Following out the discussion held between myself and Messrs. Lansburgh and Lifter, we did not determine with any finality as to which of the two methods would be used in order not to break up the conversation. I subsequently talked to Mr. Morris Lansburgh on May 21st and we went over the conversations had in Mr. Sibley's office. I made very clear to Mr. Lansburgh that we could not agree to the plan advanced by Mr. Sibley and desired a secret ballot election as advanced by us. Mr. Lansburgh then advanced a proposition that consisted of recognizing the Hotel Employees Union Local No. 255 on behalf of its members employed in the Robert Richter Hotel, providing we withdrew our claim for representation in the Versailles Hotel, which is also owned by the corporation of which Mr. Lansburgh is an officer and provided further, that we withdrew from court the Motions to Vacate the Temporary Restraining Orders in the San Souci and Sherry Frontenac cases, both of which hotels are owned and operated by corporations of which Mr. Lansburgh is an officer. I took this proposal under serious consideration and Mr. Lansburgh in turn undertook to have the proposal adopted by his partners and/or his associates. [fol. 49] I subsequently talked to Mr. Lansburgh on or about May 23d in which conversation he informed me that the plan above described was not acceptable to his associates and he therefore could not carry it out. I then informed him that the method of determining the free choice of the employees of the Versailles Hotel as advanced by Mr. Marion E. Sibley was unacceptable to us and that we are at all times agreeable to an election, however, and that if he would not agree to an election, we would proceed in such manner which would best protect the interests of the members of our Union, employed at the Versailles Hotel.

Finally, on June 6, 1955, on behalf of Local 255, I requested Mr. Paul J. Weiss, a certified public accountant of the State of Florida, to examine the books and records of Local 255 to ascertain the number of employees of the Ver-

sailles Hotel, which have designated Local No. 255 as their bargaining agent and who are members of Local No. 255. The said Paul J. Weiss, certified public accountant, did, on the 6th day of June, 1955, determine such facts and did certify that fifty-nine employees of the Versailles Hotel were members of Local 255 and have designated Local 255 as their collective bargaining agent. Said certification was duly sworn to and certified before a Notary Public of the State of Florida; the original of said certification was delivered to Morris Lansburgh on behalf of the Versailles Hotel on [fol. 50] the 6th day of June, 1955, together with the letter described in Paragraph 6 of Defendants' Answer herein. The letter and certification attached to the said Answer are exact copies of the letter and certification referred to: also, together with said letter I had delivered to Morris Lansburgh, as officer of Versailles Hotel, a list of "requests to settle grievances and complaints"; an exact copy of such list is attached to the Answer. Said letter, certification and list are made a part of this Affidavit as fully as if set forth herein.

On June 11, 1955, I received a certain letter on behalf of the Versailles Hotel. The exact wording of that letter, together with statements in regard to that reply are set forth in Paragraph 6 of Defendants' Answer and are attached as part of this Affidavit, as fully as if set forth herein in their entirety, said statements being true statements.

On the 11th day of June, 1955, picketing commenced at the Versailles Hotel for all of the reasons aforesaid. Said picketing has been entirely peaceful.

On the 25th day of May, 1955, a secret ballot election was held among all employees of the Plaintiff Hotel working within the jurisdiction of Local 255, for the purpose of determining their desires as to representation and as to striking; said election was held under the supervision of an impartial person, not a member of the Defendant Union, namely, Samuel J. Geison, who is a radio broadcaster over Radio [fol. 51] WAHR and who is a columnist for the Miami Beach publication, "Panorama". Fifty-seven employees of the Versailles Hotel working within the jurisdiction of Local 255,

participated in that election and fifty-seven of said fifty-seven employees voted in favor of representation by Local 255 and in favor of a strike. This is a substantial majority of the employees of the Versailles Hotel working within the jurisdiction of Local 255 and who would be affected by any strike, walk-out or cessation of work at Plaintiff Hotel.

The Plaintiffs, in the operation of said hotel, are engaged in a business which affects interstate commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida, and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state bus lines, inter-state and international steamship companies, and by passenger automobiles. Said business further is part of "package deal" Arrangements with said various inter-state and International airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Trans-World Airlines, National Airlines, [fol. 52] and many others; various inter-state and international steamship companies including Peninsular & Occidental Steamship Company, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coastline Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus lines companies including Greyhound Bus Lines Company, Trailways Bus System and various other inter-state bus line companies. Said "package deal" arrangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said inter-state and international sales.

The advertising and selling of the said "package" tours are done jointly by Plaintiffs and said inter-state carriers. All expense incurred in promoting, making and consummating said inter-state and international sales are jointly shared by Plaintiffs, and said inter-state and international carriers. The proceeds of said inter-state and international sales are divided between Plaintiff, as operator of said hotel and said inter-state and international carriers.

[fol. 53] Said Plaintiffs, as a part of the operation of said hotel, purchases numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said Plaintiffs, as a part of the operation of said hotel, sell directly outside of the State of Florida and within the State of Florida for carriage or re-sale, outside of the State of Florida. Said Plaintiffs as part of the operation of said hotel, advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the states of the United States outside the State of Florida and in various countries outside of the United States. Further Affiant Sayeth Not.

/s/ David Herman

Sworn to and subscribed before me, this 6th day of July 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large. My commission expires: August 20, 1955.

(Notary Seal)

[fol. 54] ATTACHMENT TO ANSWER

WESTERN UNION TELEGRAM
AA47

A.MAA118 PD-FAX MIAMI BEACH FLO 27 121 PME=

DAVID HERMAN
HOTEL EMPLOYEES UNION LOCAL 255
2575 WASHINGTON AVE RD MIAMI BEACH FLO=

THE HOTEL VERSAILLES HAS DESIGNATED MARION E SIBLEY TO REPRESENT IT IN NEGOTIATIONS STOP HE HAS AGREED TO MEET WITH YOU AT TEN AM ON THURSDAY, MAY 12TH IN THE CONFERENCE ROOM OF SIBLEY AND DAVIS 605 LINCOLN ROAD BUILDING STOP WE RESERVE THE RIGHT TO QUESTION YOUR AUTHORITY TO REPRESENT OUR EMPLOYEES AT SUCH MEETING=

MORRIS LANSBURGH VERSAILLES HOTEL=

(Letter dated June 6, 1955, addressed to Mr. Morris Lansburgh, Hotel Versailles, 3425 Collins Ave., Miami Beach, Florida, from David Herman, Director of Organization, Hotel Employees Union Local #255, omitted.)

[fol. 55] (Document entitled "Certification," signed by Paul J. Weiss on the 6th day of June, 1955, omitted.)

(Letter dated June 11, 1955, addressed to Mr. David Herman, Director of Organization, Hotel Employees Union Local 255, 1575 Washington Avenue, Miami Beach, Florida, from The Versailles Hotel, by Morris Lansburgh, omitted.)

(Eighteen union membership application cards omitted.)

(Forty-three Hotel Employees Union, Local No. 255, membership cards omitted.)

(Sixteen Miami Hotel Trades Council authorization cards omitted.)

[fol. 56]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

[Title omitted]

SUPPLEMENTAL ANSWER—Filed June 28, 1955

Come Now the defendants and make this their Supplemental Answer and would respectfully show unto this Honorable Court that this Court is without jurisdiction to act in the cause for the reason that the plaintiffs in operation of said hotel are engaged in a business which affects inter-state commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state buslines, inter-state and international steamship companies and by passenger automobiles.

Said business further is part of "package deal" arrangements with said various inter-state and international airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Trans-World Airlines, National Airlines, and many others; various inter-state [fol. 57] and international steamship companies including Peninsular & Occidental Steamship Company, Waterman Steamship Corporation, and many other companies; various inter state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coast Line Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus line companies including Greyhound Bus

Line Company, Trailways Bus System and various other inter-state bus line companies. Said "package deal" arrangements are arrangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by plaintiffs and said inter-state carriers. All expenses incurred in promoting, making and consummating said inter-state and international sales are jointly shared by plaintiffs and said inter-state and international carriers. The proceeds of said inter-state and international sales are divided between plaintiffs as operator of said hotel and said inter-state and international carriers.

Said plaintiffs, as a part of the operation of said hotel, [fol. 58] purchase numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said plaintiffs as a part of the operation of said hotel sell directly outside of the State of Florida and within the State of Florida for carriage or resale outside of the State of Florida.

Said plaintiffs as part of the operation of said hotel advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous other states of the United States outside of the State of Florida and in various countries outside of the United States.

Plaintiffs as part of the operation of said hotel have on said premises various shops and services engaged in inter-state commerce including Western Union Telegraph services, numerous travel agencies, transportation offices for airlines, steamship lines, railroad companies and bus lines, inter-state stock exchange branches, inter-state chain drug stores, inter-state clothing stores and other inter-state retail stores.

Defendants further state that said hotel is part of a multi-state chain, said entire chain being engaged in inter-state commerce, so that labor disputes at plaintiffs' hotel affects inter-state commerce.

Defendants further state that the Congress of the United States has by legislative enactment under the Constitution [fol. 59] of the United States, occupied the fields as to all matters complained of in the petition of plaintiffs and this State Court has no jurisdiction to act in the premises wherefore the said cause should be dismissed for lack of jurisdiction.

Gramling & Gramling, J. W. Brown, Ben Gettler. By /s/ Carrington Gramling, 224 Shoreland Building, Miami, Florida, Solicitors for Defendants.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

MOTION TO STRIKE SUPPLEMENTAL ANSWER—
Filed August 5, 1955

Come now the Plaintiffs in the above styled cause by their undersigned attorneys, Sibley & Davis and Patton & Kanner, and move to strike the Supplemental Answer filed by the Defendants, and for grounds of said motion say:

1. That the matters therein alleged are immaterial.

2. That the matters therein alleged are insufficient to [fol. 60] state any defense.

Sibley & Davis, Patton & Kanner, By /s/ Samuel J. Kanner, Attorneys for Plaintiffs.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

[Title omitted]

MOTION TO DISMISS DEFENDANTS' REQUEST FOR AFFIRMATIVE RELIEF—Filed August 5, 1955

Come now the Plaintiffs in the above styled cause by their undersigned attorneys, Sibley & Davis and Patton & Kanner, and move to dismiss the defendants' request for affirmative relief, and for grounds of said motion say:

1. That said request fails to state a claim or defense upon which relief can be granted.

Sibley & Davis, Patton & Kanner, By /s/ Samuel J. Kanner, Attorneys for Plaintiffs.

[fol. 61]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

AMENDMENT TO COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF—Filed September 2, 1955

Come now the Plaintiffs, R. S. Levy, Daniel Lifter and J. J. Lansburgh as Trustee for The Ellen Lansburgh Trust, the Morris Lansburgh, Jr. Trust and The Leonard Lansburgh Trust and file their amendment to their Complaint for Injunctive and other relief filed herein, and reaffirming the allegations of their complaint, say:

1. That the plaintiffs as lessees and the owner of the hotel, in the operation of the Versailles Hotel and Cabana Club at 3425 Collins Avenue, Miami Beach, Florida, realized that there is a growing demand in the community for larger and superior hotel accommodations in order to attract and serve the increasing number of travelers, residents, tourists and vacationers. That in order to attract and accommodate a larger and more select clientele, the owner of the hotel and the plaintiffs as lessees have entered upon an ambitious and expensive project for enlarging and improving their hotel facilities.

2. That the owner has entered into a contract with Robert L. Turchin, Inc., contractor and builder, whereby an [fol. 62] addition, consisting of 132 new rooms, will be annexed to the Versailles Hotel which presently consists of 144 rooms. That the facilities of the Versailles Hotel will be remodeled and improved by numerous renovations and repairs, and that upon the completion of this entire project, there will exist a large, modern, luxury hotel consisting of 276 rooms, together with dining rooms, card rooms, lobbies, cocktail lounges and cabana club.

3. That the owner of the Versailles Hotel and the plaintiffs as lessees, as a result of these plans for enlarging and improving their hotel facilities, have incurred obligations to contractors and builders in excess of $1,500,000.00. That the construction of the new additions to the Versailles Hotel and the remodeling and renovation of the present facilities were commenced on or about April 20, 1955. That the anticipated completion date of this project is November 1, 1955. That the plaintiffs, relying upon the fact that the building and renovation will be completed upon this date have made elaborate plans for the opening of the hotel in its enlarged and improved condition upon November 1, 1955. That the plaintiffs have confirmed numerous reservations for guests and have incurred large financial obligations in anticipation of the completion of this project by November 1, 1955.

4. That upon August 27, 1955, it was necessary to close the Versailles Hotel and to cease to accommodate hotel [fol. 63] guests in order to join the present hotel facilities with the new addition, consisting of 132 rooms and in order to complete the remodeling and the renovations and repairs of the entire hotel.

5. That Robert L. Turchin, Inc. employs numerous craftsmen and laborers such as air-conditioning workers, glass workers and plumbers. That many of these craftsmen and laborers are members of certain labor unions. That at the present state of construction, it is necessary for these craftsmen and laborers to cross the picket line which the defendants have illegally maintained upon the plaintiffs' premises.

6. That the plaintiffs are informed by the general supervisor in charge of construction project that the various craftsmen and laborers will not cross the illegal picket line in order to complete the necessary work upon the plaintiffs' hotel premises.

7. That the work upon the plaintiffs' hotel premises is, therefore, at a standstill. That because the owner of the Versailles Hotel and the plaintiffs as lessees have together incurred financial obligations in excess of $1,500,000.00 in order to complete said project, and because the plaintiffs have made elaborate plans to open the hotel in its enlarged and improved condition upon November 1, 1955, and have made numerous reservations for guests and undertaken many financial obligations in anticipation of the completion of their improved hotel by November 1, 1955, the [fol. 64] plaintiffs will incur great financial losses and suffer irreparable injury unless the illegal picketing is enjoined.

8. That the picket line maintained by the defendants is illegal and contrary to the laws of the State of Florida because the defendants do not represent the plaintiffs' employees and have offered no satisfactory or trustworthy proof of representation. That the picket line is an illegal attempt to coerce the plaintiffs to negotiate with the defendants' union and to coerce the plaintiffs' employees to join said union. That at the present time this picket line can serve no legitimate purpose since the hotel is closed and is not accommodating any guests. That the picket line, therefore, is now illegal for the additional reason that it is picketing Robert L. Turchin, Inc., with whom the defendants do not contend that they have any labor dispute and whose employees the defendants do not even purport to represent. That the picket line therefore is an attempt to effect a secondary boycott and is illegal and contrary to the laws of the State of Florida.

Wherefore, the plaintiffs pray that the Court, for the reasons set forth in the complaint for injunctive and other relief filed herein and in this amendment to the complaint, will take jurisdiction of the parties and the subject matter

and grant the relief sought in the complaint for injunction and other relief filed herein.

[fol. 65] R. S. Levy, Daniel Lifter and J. J. Lansburgh as Trustee for the Ellen Lansburgh Trust, the Morris Lansburgh, Jr. Trust and the Leonard Lansburgh Trust, Plaintiffs. By /s/ Daniel Lifter.

Duly sworn to by Daniel Lifter, jurat omitted in printing.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

AFFIDAVIT—Filed September 16, 1955

Personally appeared before me, the undersigned authority, Daniel Lifter, who, being first duly sworn, deposes and says:

That the affiant is one of the plaintiffs in the above-styled cause. That the plaintiffs operate the Versailles Hotel and Cabana Club, the same being located at 3425 Collins Avenue, Miami Beach, Florida. That the plaintiffs operate the Versailles Hotel under and by virtue of the terms and [fol. 66] conditions of a lease indenture wherein the plaintiffs are lessees and the lessor is Liflans Corp., a Florida corporation. That under the terms of this lease indenture the lessees are obligated to pay a rental of $141,000 a year to the lessor, the owner of the fee simple title to the land upon which the hotel is situated. That to guarantee all of the lessees' obligations under the terms of the lease, a security deposit of $50,000 has been posted with the lessor, and that the said deposit of $50,000 will be jeopardized if the lessees are unable to continue the rental payments which they are obligated to pay. That the value of the lessees' interest in this hotel property is in excess of $1,500,000.

That the Versailles Hotel consists of 144 rooms, together with other customary hotel facilities. That in the operation of the Versailles Hotel the plaintiffs employ ninety-five employees, not including the managerial staff.

That the management of the Versailles Hotel have not had and do not now have any labor dispute with the employees with regard to wages, working conditions, or any other phase of employee-employer relationship. That the management of the Versailles Hotel has enjoyed the most cordial labor relations, and has afforded the employees a satisfactory standard of pay, hours of work, and other working conditions.

That for a considerable period of time immediately prior to June 11, 1955, the defendant labor union, Hotel Em-
[fol. 67] ployees Union Local No. 255, of the American Federation of Labor, made certain attempts to solicit the membership of the employees of the Versailles Hotel in this labor organization. That such solicitations were often made upon the hotel premises, and during the working hours of the employees, thus molesting the employees and disrupting the work being done by the employees of the Versailles Hotel.

That the management of the Versailles Hotel does not have any contract with the defendant union, Hotel Employees Union Local No. 255, of the American Federation of Labor, and that the management of the Versailles Hotel has received no satisfactory and trustworthy proof that this labor organization represents its employees, and that the employees desire to have a contract negotiated with the defendant union on their behalf.

That notwithstanding the fact that the defendant union has wholly failed to offer any satisfactory proof of representation the defendant union has made attempts to force the management of the Versailles Hotel into recognizing the defendant union as a collective bargaining agent for the Versailles Hotel employees. That the plaintiffs in this cause designated Marion E. Sibley, Esq., an attorney at law, as the bargaining agent for the Versailles Hotel, and authorized him to meet with the defendant, David Herman, one of the defendant union's organizers. That no other agent has been so authorized and designated by the plaintiffs.

[fol. 68] That a conference was scheduled for May 20, 1955, at the offices of Marion E. Sibley, Esq., where the defendant, David Herman, was to meet with Mr. Sibley,

the designated bargaining agent for, and on behalf of, the management of the Versailles Hotel.

That on or about May 18, 1955, the defendant, David Herman, met with the affiant. That there was present at this meeting, Mr. Morris Lansburgh, the general manager of the Versailles Hotel. That your affiant owns an interest in the Robert Richter Hotel, located at 3301 Collins Avenue, Miami Beach, Florida, being one of the owners of a leasehold interest in the Robert Richter Hotel. That Mr. Morris Lansburgh, the general manager of the Versailles Hotel, is also one of the owners of the leasehold interest in the Robert Richter Hotel. That at this meeting the affiant, together with Mr. Morris Lansburgh, made known to the defendant, David Herman, the fact that the management of the Versailles Hotel were planning to construct an extensive addition to the Versailles Hotel, and to make numerous repairs and renovations of the hotel premises. That the defendant, David Herman, was informed that the new addition would consist of 132 new rooms, and that upon the completion of the new construction, together with the repairs and renovations of the old hotel premises, there would exist a large, modern luxury resort hotel consisting of 276 rooms, together with the most modern and luxurious [fol. 69] hotel facilities. That it was pointed out to the defendant, David Herman, that the completion of this project would not only enhance the value of the property, but would immensely benefit the entire community by providing hotel accommodations for the growing needs of the many travelers, residents, tourists and vacationers that are attracted to this area in increasing numbers. That it was emphasized that the uninterrupted work upon this building and construction project would provide profitable employment for many craftsmen and laborers in the various construction fields. That it was urged upon Mr. Herman that if the defendant union anticipated making any demands upon, or claiming any grievances against, the Versailles Hotel and the Robert Richter Hotel, that any measures he might deem it advisable to take, such as striking or picketing, should be confined to the Robert Richter Hotel. That this was insisted upon, it being pointed out, that the precipitation of any alleged labor dispute involving the

Versailles Hotel, would raise serious difficulties involving the planned construction project. That striking or picketing the premises of the Versailles Hotel would not only possibly cripple the owners of the Versailles Hotel in the operation of their hotel, but would seriously impede the construction project, to the disadvantage of the entire community, and the many craftsmen and laborers employed upon the construction job. That at the termination of this meeting on May 18, 1955, Mr. Herman informed the affiant, [fol. 70] in the presence of Mr. Morris Lansburgh, that he could give no assurances that this request would be honored, and that the Versailles Hotel would not be picketed.

That the scheduled meeting on May 20, 1955, between David Herman, organizer of the defendant union, and Marion E. Sibley, Esq., the designated agent of the Versailles Hotel, to bargain with Mr. Herman, was duly held at the offices of Sibley & Davis, upon the scheduled date. That at this meeting between Mr. Sibley and Mr. Herman, there were present the affiant, Mr. Morris Lansburgh, and a Mr. J. W. Brown, an attorney for the defendant union. That at the opening of this meeting, Mr. Sibley offered to negotiate with the defendant union, if the defendant union would furnish satisfactory and trustworthy proof that it, in fact, represented a majority of the employees of the Versailles Hotel, but that the defendant union failed and refused to furnish Mr. Sibley the names of those employees whom it purported to represent, and that the defendant union has continued to fail and to refuse to submit any satisfactory and trustworthy proof, or any proof whatsoever that they represent a majority of the employees of the Versailles Hotel. That Mr. Sibley suggested to Mr. Herman a formula for determining the question of representation, suggesting that the employees of the Versailles Hotel appear before Mr. Darrey A. Davis, a partner of Mr. Sibley, and before Mr. Brown, counsel for the defendant [fol. 71] union, and signify whether or not they designated the defendant union as their bargaining agent. That the said conference was adjourned, but it was determined that it would reconvene on Monday, May 23, 1955. That the parties were to consider the proposal of Mr. Sibley, and that on Monday, May 23, 1955, Mr. Herman was to

give his response to the suggested proposal. That although Mr. Sibley remained available throughout the day of May 23, 1955, the defendant, Mr. Herman, completely ignored and disregarded the scheduled meeting.

That no further communications were received from the defendants until a communication dated June 6, 1955, directed to Mr. Morris Lansburgh, Manager of the Versailles Hotel, requesting that the management of the Versailles Hotel meet with and negotiate with the defendant union. That a copy of this communication was attached to the complaint filed in this cause, and designated as Plaintiffs' Exhibit A. That accompanying this communication was an instrument entitled, "Requests To Settle Grievances and Complaints." That a copy of this instrument is attached to the complaint filed in this cause, and designated as Plaintiffs' Exhibit B. That also accompanying this communication of June 6, 1955, was an instrument signed by one Paul J. Weiss, a copy of such instrument being attached to the complaint filed in this case, as Plaintiffs' Exhibit C. That the said Paul J. Weiss designated himself as a certified public accountant, and stated that [fol. 72] from an examination of the union's records it appeared that 59 of "your employees" are members of Local No. 255.

That Mr. Morris Lansburgh, Manager of the Versailles Hotel, answered this communication of June 6, 1955, by his letter dated June 11, 1955, wherein he stated that upon the receipt of the names of the employees which the union claimed to represent, together with trustworthy proof that such employees have, in fact, designated the union to represent them, the management of the Versailles Hotel would further communicate with the defendant, David Herman.

That although the management of the Versailles Hotel have at all times remained ready to negotiate with the defendant union upon the presentation of satisfactory and trustworthy proof that the union, in fact, represents its employees, the defendant union, without making further communication to the Versailles Hotel, established a picket line on June 11, 1955. That such picket line is composed of individuals carrying signs which read, "This hotel refuses to negotiate with Hotel Employees Union, Local 255,

A.F.L." That the defendant union has taken this action in spite of the fact that Mr. Marion E. Sibley remained ready to meet with Mr. David Herman at the scheduled meeting on May 23, 1955, and in spite of the fact that Mr. Morris Lansburgh, by his letter of June 11, 1955, offered to communicate with the union, upon the presentation by the union of satisfactory and trustworthy proof of representation.

[fol. 73] That the contents of the picket signs is therefore false and libelous.

That the presence of this picket line since June 11, 1955, has caused the Versailles Hotel irreparable damage, because of the loss of hotel guests through the cancellation of reservations for guests which had been accepted and confirmed by the hotel. That such false publicity has caused hotel guests to believe that the hotel is not rendering the usual satisfactory hotel services.

That the Versailles Hotel has been further damaged by the picket line, since the picket line has interfered with and crippled the owners of the Versailles Hotel in their construction project for enlarging and improving the hotel facilities. That since about August 27, 1955, the old premises of the Versailles Hotel have been closed to hotel guests. That it is necessary for the many craftsmen and workers employed upon this construction project to cross the picket line in order to enter the premises of the Versailles Hotel. That the owners of the Versailles Hotel have entered into a contract with Robert L. Turchin, Inc. for the completion of the 132-room addition and the renovations and repairs of the whole hotel premises. That the promised completion date for this entire project was to be on or about November 1, 1955. That prior to August 27, 1955, it was not necessary [fol. 74] for the various workers and craftsmen to cross the picket line in order to work upon this construction project. That since this date, however, it is necessary for these workers to cross the picket line in order to proceed with the completion of the entire construction project. That the craftsmen and workers employed by Robert L. Turchin, Inc., and the various subcontractors working on the job, are members of different labor organizations. That they have been requested to cross the picket line and complete the construction project, but they have refused to do so.

That in anticipation of completing this entire project the management of the Versailles Hotel have planned to open their new, enlarged and improved hotel on November 1, 1955. That they have accepted and confirmed numerous reservations for this date, and for the immediately following winter season. That because of the maintenance of the picket line by the defendant, work upon the building project is at a standstill. That the hotel cannot be completed upon this date if the picket line continues, and the management of the Versailles Hotel will suffer irreparable damage. That the owners and lessees of the Versailles Hotel have incurred financial obligations in excess of $1,500,000. That the actions of the defendants is therefore causing irreparable damages to the owners of the hotel premises, to the lessees and management of the Versailles Hotel, to the contractor and subcontractors employed on the job, [fol. 75] to the many craftsmen and workers employed on the building project, as well as to the general community.

Further affiant sayeth not.

/s/ Daniel Lifter

Sworn to and subscribed before me this 15th day of September, 1955.

/s/ R. H. Libman, Notary Public, State of Florida at Large. My commission expires Feb. 17, 1959. Bonded by American Surety Co. of N. Y.

(Notary Seal)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

AFFIDAVIT—Filed September 16, 1955

STATE OF FLORIDA,
COUNTY OF DADE, *ss.*:

Personally appeared before me Morris Lansburgh, who being by me first duly sworn, deposes and says:

That the Affiant is the general manager of the Versailles [fol. 76] Hotel and Cabana Club, the same being located

at 3425 Collins Avenue, Miami Beach, Florida. That the Versailles Hotel is operated by R. S. Levy, Daniel Lifter and J. J. Lansburgh as Trustees for the Ellen Lansburgh Trust, the Morris Lansburgh, Jr. Trust and the Leonard Lansburgh Trust under the terms of a lease indenture under which the lessees are obligated to pay a rental of $141,000.00 a year to Liflans Corporation, a Florida corporation, the owner of the fee simple title upon which the hotel is situated. That the above lessees have deposited with Liflans Corporation a security deposit of $50,000.00 and that if the lessees are unable to continue the rental payments which they are obligated to pay, said deposit will be jeopardized under the terms of the lease. That the Versailles Hotel is a multiple-storied building consisting of 144 rooms, together with other customary hotel facilities and that in the operation of the Versailles Hotel, there are employed 95 employees. That the value of the leasehold interest of the Versailles Hotel is in excess of $1,500,000.00.

That on June 11, 1955, the Versailles employed 95 employees, not including those employees holding managerial positions. That there did not exist any labor dispute between the management of the Versailles Hotel and its employees on June 11, 1955, and that there does not exist any labor dispute at the present time.

That the management of the Versailles Hotel does not have any contract with the defendant Union, Hotel Employees Union, Local No. 255 of the American Federation of Labor.

[fol. 77] That for some time prior to June 11, 1955, the defendant union caused its agents and organizers to come upon the premises of the Versailles Hotel and solicit the hotel's employees to become members of the union, and solicitations being made while the employees were engaged in their work, thus disrupting the work of the employees and interfering with the operation of the Versailles Hotel.

That prior to May 20, 1955, the management of the Versailles Hotel designated Marion E. Sibley as the bargaining agent on behalf of the Versailles Hotel. Mr. Sibley was also designated as the bargaining agent for and on behalf of the Robert Richter Hotel. That Marion E. Sibley was

the only agent of the management of the Versailles Hotel authorized as bargaining agent for the purpose of any negotiations with the defendant union and this fact was communicated to the defendant union.

That on or about May 3, 1955, the affiant received a telegram from one David Herman, director of organization for the Hotel Employees Union, Local No. 255. That said telegram requested a meeting with the Affiant to negotiate on behalf of the employees of the Versailles Hotel which the defendant union purported to represent. That Affiant answered this telegram, suggesting a meeting with Marion E. Sibley, the agent designated by the management of the Versailles Hotel to meet with the defendant union. That Affiant suggested a meeting with Marion E. Sibley in the [fol. 78] offices of Sibley & Davis on May 12, 1955. That Affiant subsequently suggested to the defendant, David Herman, that the meeting scheduled for May 12th until May 20th. That Affiant received a telephone call from Mr. David Herman, confirming the fact that he would meet the designated agent of the Versailles Hotel, Mr. Marion E. Sibley, on May 20, 1955.

That on or about May 18, 1955, the Affiant met with Mr. David Herman. That there was present at this meeting, Mr. Daniel Lifter, one of the plaintiffs in this cause. That Affiant again informed Mr. Herman that the designated agent for any bargaining with the defendant union was Mr. Marion E. Sibley. That in addition to being the general manager of the Versailles Hotel, Affiant is also general manager of the Robert Richter Hotel and one of the owners of the Robert Richter Hotel. That Mr. Daniel Lifter has an interest as owner in both the Versailles Hotel and the Robert Richter Hotel. That at this meeting on May 18, 1955, with Mr. David Herman, Affiant and Mr. Lifter informed Mr. Herman that the management of the Versailles Hotel was anticipating an ambitious and expensive project for enlarging and improving the hotel facilities by adding a new addition, to consist of 132 new rooms and by making numerous renovations and repairs upon the Versailles Hotel. Affiant explained to Mr. Herman that the management of the Versailles Hotel was anxious to complete this building project and thus bring into existence a new, large,

[fol. 79] modern, luxury hotel to serve the growing needs of the community better and it was suggested to Mr. Herman that as a courtesy to us and as a service to the community which will profit from the increased business of a larger and more adequate hotel facility that if the defendant union had any grievances with the management of the Versailles and Robert Richter hotels, that such measures as he might deem advisable to take, such as striking or picketing, be confined to the Robert Richter Hotel so that the construction project at the Versailles Hotel would not be impeded. That at this meeting on May 18th, Mr. Herman informed us, however, that he could give us no assurances that he would comply with Affiant's request.

That Marion E. Sibley, the duly-designated bargaining agent for the management of the Versailles Hotel, met with the defendant, David Herman, at the offices of Sibley & Davis on May 20, 1955. That there were present at this meeting, Marion E. Sibley, Daniel Lifter, the Affiant, the defendant, David Herman, and Mr. Brown, an attorney for the defendant union. That at this meeting, Marion E. Sibley offered to negotiate with the defendant union if the defendants presented satisfactory and trustworthy proof that they represented a majority of the employees of the Versailles Hotel. That the defendants failed and refused to furnish any list of the employees whom they purported to represent and have continued to fail and refuse to submit any satisfactory and trustworthy proof, or any proof [fol. 80] whatsoever, that they represent a majority of any of the employees of the Versailles Hotel. That the Versailles Hotel, through its duly designated-agent, Marion E. Sibley, suggested a formula for ascertaining whether or not the defendants represented a majority of the employees of the Versailles Hotel. That Mr. Sibley suggested that the employees of the Versailles Hotel appear before Mr. Darrey Davis, a partner of Mr. Sibley, and Mr. Brown, counsel for the defendant union, and signify whether or not they had designated the defendant union as their bargaining agent. That the said conference was then adjourned and a specific date was set, namely, Monday, May 23, 1955. That on said date the parties promised to meet again and that at said time David Herman was to respond to the pro-

cedure suggested by Mr. Sibley. That Mr. Marion E. Sibley held himself available and ready at his office throughout May 23, 1955, for the purpose of continuing the conference with David Herman and with Mr. Brown, attorney for the defendant union. That the defendants did not keep the appointment but, on the contrary, ignored the conference which was set and neither Mr. Sibley nor your Affiant heard any more from the defendants until a communication dated June 6, 1955, which was addressed to your Affiant at the Versailles Hotel. That said communication was sent by the defendant, David Herman. That a copy of said communication was attached to the complaint filed herein and designated as Plaintiffs' Exhibit "A". That accompanying this [fol. 81] communication was an instrument designated as a request to settle grievances and complaints. That a copy of this instrument is attached to the complaint filed herein and designated as the Plaintiffs' Exhibit "B". That accompanying the communication of June 6, 1955, was also an instrument, signed by one Paul J. Weiss, a copy of said instrument being attached to the complaint filed herein as Plaintiffs' Exhibit "C". That in the instrument attached to the complaint filed herein as Exhibit "C", the said Paul J. Weiss designated himself as a certified public accountant and stated that from an examination of the union's records that 59 of "your employees" are members of Local No. 255. That upon receipt of the above-described communication, the Affiant addressed a communication to the defendants and again requested that the defendants furnish to the management of the Versailles Hotel a list of the employees whom the defendant professed to represent, together with trustworthy proof that such employees had in fact designated the defendant union as their bargaining agent. That a copy of this communication is attached to the complaint filed in this cause as Plaintiffs' Exhibit "D". That at no time has the defendant union ever furnished the management of the Versailles Hotel with any satisfactory and trustworthy proof that it in fact represents the employees of the Versailles Hotel. That the management of the Versailles Hotel has at all times held itself ready and willing to negotiate with the defendant union, upon the defendant [fol. 82] union furnishing satisfactory and trustworthy

evidence that it represents the employees of the Versailles Hotel, and the duly-designated agent of the Versailles Hotel, Marion E. Sibley has at all times remained ready and willing to negotiate with the defendant upon the defendant union furnishing such satisfactory and trustworthy proof of representation. That despite the Affiant's letter of June 11th in response to the defendants' communication of June 6th, and despite the fact that the Versailles Hotel's duly-authorized agent, Marion E. Sibley, remained ready and willing to meet with the defendants upon the scheduled date, May 23, 1955, the management of the Versailles Hotel received no further communications from the defendants and upon June 11th, 1955, the defendants caused pickets to be placed in front of the Versailles Hotel. That said picketing has been carried on continuously in front of the approaches and environs of the Versailles Hotel. That four or more pickets are parading in front of the Versailles Hotel, carrying placards with signs which state: "This hotel refuses to negotiate with Hotel Employees' Union, Local 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach." That these signs are obviously false and libellous since the Affiant, by his letter of June 11th, did not refuse to negotiate with the defendants but merely requested that the defendants furnish satisfactory and trustworthy proof that the employees of the Versailles Hotel had in fact designated the defendant union to repre-[fol. 83] sent them and that since the designated agent, Marion E. Sibley, had at all times held himself ready and willing to meet with the defendants at the scheduled conference on May 23, 1955, and has continued to remain ready and willing to meet with the defendants and receive from them satisfactory and trustworthy proof that they represent the employees of the Versailles Hotel.

That as a result of the illegal picket line which has continuously been present since June 11th, the Versailles Hotel has suffered irreparable damage. That the hotel, upon June 11, 1955, was accommodating many guests and that numerous reservations had been accepted and confirmed for the period immediately following June 11, 1955, and for the ensuing winter season. That because of the false publicity attendant upon the illegal picket line, the management of

the Versailles Hotel has been forced to cancel many reservations since it is represented to the public that the usual services are no longer available.

That the owners and the lessees of the Versailles Hotel and Cabana Club have entered into an extensive project for enlarging and improving the hotel facilities. That the owners have entered into a contract with Robert L. Turchin, Inc., contractor and builder, whereby an addition of 132 rooms will be annexed to the Versailles Hotel which has in the past consisted of 144 rooms. That in addition to this new annex, there will be considerable renovations and repairs [fol. 84] to the old hotel building. That the owners and lessees of the hotel have incurred obligations to contractors and builders in excess of $1,500,000.00 in order to complete this building project. That according to the plans and specifications entered into with Robert L. Turchin, Inc., the anticipated completion date for this building project is on or about November 1, 1955, and that the management of the Versailles Hotel, relying upon the builder's completion of the project upon this date, have accepted and confirmed numerous reservations for guests for the period immediately following November 1, 1955, and have incurred great expense in anticipation of an elaborate and expensive opening upon November 1st.

That on or about August 27, 1955, the Versailles Hotel was closed to the public in order to complete the building project and annex the new addition to the old hotel building. That Robert L. Turchin, Inc. employs many craftsmen, such as air-conditioning workers, glass workers and plumbers, and that these craftsmen and laborers are members of various labor unions.

That at the present stage of construction it is necessary for the craftsmen and laborers to cross the illegal picket line set up by the defendants in order to work upon the premises of the Versailles Hotel. That the various craftsmen and laborers will not cross the picket line and therefore, the construction project is at a standstill. That unless the [fol. 85] illegal picket line is removed and the construction project proceeds according to schedule, the Versailles Hotel will incur irreparable damage because of the numerous

reservations accepted and confirmed for the opening date on November 1, 1955.

Further Affiant sayeth not.

/s/ Morris Lansburgh, Affiant.

Sworn to and subscribed before me this 15 day of September, 1955.

/s/ R. H. Libman, Notary Public, State of Florida at Large. My Commission Expires:
Notary Public, State of Florida at Large. My commission expires Feb. 17, 1959. Bonded by American Surety Co. of N. Y.

(Notary Seal)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

AFFIDAVIT—Filed September 16, 1955

STATE OF FLORIDA,
COUNTY OF DADE, *ss.*:

[fol. 86] Before Me, the undersigned authority, personally appeared Marion E. Sibley, who being by me first duly sworn, deposes and says:

That deponent was designated as bargaining agent for the Versailles Hotel prior to May 20, 1955. As such agent, pursuant to the request of David Herman, deponent met with said Herman, on May 20, 1955. A true transcript of the proceedings which occurred at said meeting is hereto attached, marked Exhibit "A", and made a part hereof.

At said meeting, deponent required that Herman and Local No. 255 established that they represented the employees of the Versailles Hotel. After discussion, deponent submitted a formula to said Herman, whereby it could be established whether or not said Local No. 255, in fact, represented the employees of the Versailles Hotel. The formula is clearly disclosed by the transcript hereto attached. The conference between Herman and the deponent adjourned until Monday, May 23, 1955, for the purpose of receiving approval of the procedure suggested by the deponent.

Deponent held himself available at his office throughout May 23, 1955, for the purpose of re-commencing said negotiations. Neither Herman nor any other person communicated with the deponent on behalf of Local No. 255, on the 23rd day of May, 1955, or at any other time in regard to this matter, and no person ever sought to continue said conference on behalf of said Local No. 255 as agreed. De-[fol. 87] ponent has not heard from said Local No. 255, or its representatives, in regard to this matter, since that time. Deponent has at all times been ready, able and willing to continue said conference, up and until the time the picket lines were placed around said hotel.

/s/ Marion E. Sibley.

Sworn and subscribed to before me, this 15th day of September, A. D. 1955.

/s/ Katherine B. Sheridan, Notary Public, State of Florida at Large. My commission expires:
Notary Public, State of Florida at Large. My Commission expires Nov. 1, 1955. Bonded by American Fire & Casualty Co.

(Notary Seal)

[fol. 88]

EXHIBIT "A" TO AFFIDAVIT OF MARION E. SIBLEY

CONFERENCE HELD AT THE OFFICES OF SIBLEY & DAVIS, ESQS., 605 LINCOLN ROAD, MIAMI BEACH, FLORIDA, ON FRIDAY, MAY 20, 1955, AT 12:30 O'CLOCK P. M., CONCERNING THE ROBERT RICHTER AND VERSAILLES HOTELS.

PRESENT ON BEHALF OF HOTELS:

Marion E. Sibley, Esq.
Darrey A. Davis, Esq.
Morris Lansburgh
David Lifter

PRESENT ON BEHALF OF HOTEL EMPLOYEES UNION LOCAL 255, A. F. OF L.:

J. W. Brown, Esq.
David Herman

ALSO PRESENT:

Edward Schwartz, Court Reporter,
Miami, Florida.

EDWARD SCHWARTZ
COURT REPORTER
Miami, Florida
Phone 3-9641

[fol. 89] Mr. Sibley: Gentlemen, the owners of the Versailles Hotel have designated me, as agent, to meet with you gentlemen, to bargain in the event you are the authorized representatives of the employees of the hotel, or if your union is the authorized representative.

So, I will ask you to state into the record, if you will please, the names of the parties that you represent, or contend that you represent, in the way of employees at the Versailles Hotel.

Mr. Brown: Well, Mr. Sibley, do I understand that if we state those names into the record, that you will bargain with us immediately for the names—for the persons whom we name?

Mr. Sibley: Do you mean, will I accept your statement without additional proof; is that what you mean?

Mr. Brown: You are asking us for a statement. If we give it to you, what will you do? Will you bargain for the names?

Mr. Sibley: If you actually represent the employees of this hotel, of course, we will bargain with you.

Mr. Brown: You will? You will bargain with us for the persons whom we name into the record now.

Mr. Sibley: If you actually represent the employees of the Versailles Hotel.

Mr. Brown: I mean, employees of the Versailles Hotel—[fol. 90] will you accept our statement as an indication?

Mr. Sibley: I will think—we ought to ascertain whether or not the employees have designated you.

Mr. Brown: What procedure will you use to ascertain it?

Mr. Sibley: Well, first, we will check it against the list of names that you give, and we will check it against the list of our employees, and any names you give us, we will ask them if you represent them.

Mr. Brown: You will ask them individually?

Mr. Sibley: Yes.

Mr. Brown: Well, you would be familiar—the manager of the hotel would be familiar with the actual people that work at the Versailles Hotel. He would know them.

Mr. Sibley: I do not know whether we have the manager here.

Mr. Brown: We do not have the employees here, either.

Mr. Herman: We have the owner.

Mr. Brown: I thought, perhaps, we could make it very simple. We will send these employees to you and have them tell you, and you can set up a designated spot, and you will have your list there of the employees, and we will have them come in and tell you that they have designated us as their representatives.

[fol. 91] Mr. Sibley: I think that sounds reasonably fair.

Mr. Brown: When will you set it up? When do you think—

Mr. Sibley: Well now, we have two hotels here, the Versailles Hotel and the Robert Richter.

Mr. Brown: I understand once they have done that—once any of your employees of these hotels have designated us as their bargaining representatives, then you will commence to negotiate with us for those employees.

Mr. Sibley: Well, of course, collective bargaining, I think, means that you represent the majority of the employees.

Mr. Brown: I do not understand that to be the law of Florida. I think we represent the majority, to begin with.

Mr. Sibley: Then, we do not have anything to discuss.

Mr. Brown: We do have this problem, that since there might be some argument, we will settle it in advance. I think the law of Florida says that we are entitled to bargain for those employees whom we represent, even if we represent the minority—if, for instance, we only represent

cooks and I presume we can bargain for just the cooks, couldn't we?

Mr. Sibley: Well, I am not as well versed on labor law as you are.

[fol. 92] Mr. Brown: You are familiar with the Florida law.

Mr. Sibley: I wish I were. I never know—

Mr. Brown: How about getting the Statute and we will solve this, and we will have nothing that is not clear and fully understood between us.

We want to know exactly what you are agreeing to do, and what we are agreeing to do.

Mr. Sibley: We are agreeing, sir, to bargain with you, or with Mr. Herman, or with any other officer of Local 255, if that is the designated bargaining agent, for the majority of our employees.

Mr. Brown: In other words, you will not bargain with us unless we do represent the majority of the employees; is that correct?

Mr. Sibley: I do not say that we will, and I do not say that we won't. If you say you represent the majority, we will rest on that.

Mr. Brown: Suppose your figure is correct and ours is incorrect, and we represent a minority?

Mr. Sibley: When we get to that point, let us see where we stand.

Mr. Brown: We take the position, now, that we are entitled to bargain for those employees that we represent, whether they are a majority of all the employees of the [fol. 93] hotel or whether they are a minority.

In other words, whether they are just cooks, we are entitled to bargain for all cooks. If we only represent bartenders, we are entitled to bargain for bartenders, irrespective of the fact that the bartenders might be five out of two hundred.

Will you bargain with us for the bartenders if we only represent the bartenders, for example?

Mr. Sibley: Do you only represent the bartenders?

Mr. Brown: No. I do not say that we represent—we represent more than that. I only want to know about the bartenders.

Mr. Sibley: You consider that as a separate category?

Mr. Brown: Bartenders?

Mr. Sibley: Yes.

Mr. Brown: I think bartenders are in a separate category. It is not essential that we make them a separate category.

Mr. Sibley: You do not consider them a part of your service employees that you claim to represent?

Mr. Brown: Yes. We consider those a part of those we represent.

Mr. Sibley: You do not consider them a part, or you consider all service employees to be the ones to be covered [fol. 94] by any contract that might be given to your union?

Mr. Brown: Either a single contract or separate contracts—either way. I do not think there is anything in the law that requires it to be separate or single.

Mr. Sibley: I believe you are incorrect about that. But the point I am getting at is, do you contend that the bartenders are a part of the service employees that you represent?

Mr. Brown: We do.

Mr. Sibley: Under those circumstances, I would insist that you represent a majority of the service employees.

Mr. Brown: And you will not bargain unless we represent a majority?

Mr. Sibley: I do not say that I will or not. I feel, that is a burden that is on you.

Mr. Brown: He does not say he will, and he does not say he will not.

I think we are entitled to an answer.

Mr. Herman: Let us work out the method.

Mr. Brown: Since it might be a moot question entirely, since he will bargain with us if we show a majority—

Mr. Herman: That is good enough.

Mr. Brown: What will you suggest?

Mr. Herman: Let us hear what the method is suggested. [fol. 95] Mr. Brown: I have a suggestion in that regard. Suppose—I was making a suggestion on the procedure. I would like to suggest this procedure.

You designate whoever you please to bring a list of the employees, and someone—maybe several people who would also know the employees by sight, so that when the em-

ployee comes in, he can identify them as well as check the names against the payroll list.

And that, certainly, we select a place of convenience—any place—of a neutral character.

What would you suggest in that regard—some office that we can mutually agree upon on Miami Beach, so that it will be convenient?

We will have a representative present, and we will notify our people.

And I would suggest, as the time for this, next Monday.

Mr. Herman: It could be any day agreed on. It will have to be a number of hours to allow those who are not on duty to be able to appear.

Mr. Brown: Would next Monday be agreeable with you?

Mr. Sibley: Monday would not, but Tuesday or Wednesday.

Mr. Brown: Tuesday or Wednesday.

[fol. 96] Mr. Herman: Thursday.

Mr. Brown: Wednesday—wait a minute.

Mr. Herman: Thursday will be all right. Tuesday and Wednesday, we will be busy with the general executive board meeting. Monday is too soon.

Mr. Brown: Let us say Thursday, then—Thursday morning, say, at 10:00 o'clock. Since we may have some difficulty in getting them all at one time, let us make it available for a period of two hours.

Mr. Herman: We can do it in the hotel, in the respective hotels. Why can't we do it in the hotel?

Mr. Brown: There are pickets there.

Mr. Herman: There are not lines. There are not.

Mr. Brown: We will do it in the hotels, if that is agreeable.

Mr. Herman: Sure. The employees can come to a designated spot.

Mr. Brown: Let us take a specific place. Where, in the Versailles, would you want them to report?

Mr. Sibley: Well, I would suggest this, that you said you would have your employees that you represent report to anybody we designate for the purpose of advising them of that.

I would like to confer with Mr. Lifter and Mr. Lansburgh

to see what person they want them to report to, and if [fol. 97] they come in and report that they are—

Mr. Brown: These people are on duty, and some of them are on late duty and some of them are on day duty. We have to pick a time that is feasible.

Mr. Herman: Any three hours of the day.

Mr. Lansburgh: 3:30 to 4:30 takes care of anybody between the shifts. That takes care of everybody.

Mr. Brown: That will be all right—3:30 to 4:30.

Mr. Herman: What is the question that is going to be asked?

Mr. Sibley: I think I am entitled to some information, now.

Mr. Brown: Sure.

Mr. Sibley: Suppose you represent less than the majority of the employees, we will say, of the Versailles, do I understand that you will not then picket the Versailles?

Mr. Brown: No; you do not understand anything of the kind. If we represent less than the majority of the employees, we will make it as plain as we know now how to do it, and I am trying to make it that we will not attempt to bargain for anybody that we do not represent. What we do with regard to picketing, I am not in a position to say.

Mr. Sibley: Well, I am unwilling, under the circumstances, to go through this procedure, unless it accomplishes [fol. 98] something.

If we decide that you do not represent a majority under those circumstances, we do not feel that you are the bargaining agent for collective bargaining.

Mr. Brown: In other words, you will then refuse to bargain with us for the minority?

Mr. Sibley: If that means a picket line, why—

Mr. Brown: If you refuse to bargain with us for the employees we represent, we will have to consult our best interests, under the law.

Mr. Herman: You must recognize that you are requesting a very unusual procedure for determining a claim of collective bargaining representation.

Mr. Sibley: I suppose, Mr. Herman, if I were well versed in labor-management affairs as in other states and in the Federal government, that I would have to have some dif-

ferent type or method of ascertaining who you represent and whom you do not represent.

I think it is well within my rights, in this State—and I may be wrong—to request of you the names of the persons whom you represent, or claim to represent, and then to make a reasonable investigation to ascertain whether or not you, in fact, do represent them.

I, of course, recognize that I cannot use any improper influence on those you claim, and should not do so. That [fol. 99] would be highly reprehensible, and would justify counter measures by you if I did such a thing or if my clients did such a thing.

In other words, it would not make much difference to you whether you threw a picket line up because I threaten somebody, because they designated you as the bargaining agent. The result is the same.

In this State, I am inclined to the view, what I have suggested here, is far more than you probably would be entitled to and the courts would probably grant you. I could not be dead wrong about it.

Mr. Brown: I understand, Mr. Sibley, that you take the position that we must show a majority.

Mr. Sibley: I feel this way about it. It would probably be futile to negotiate, in the event you represent a minority, and negotiate with you, and the refusal to accept your terms, if you represent a minority, and it would not justify you in putting up a picket line.

Mr. Brown: It might be the conclusion that we will reach.

Mr. Sibley: I asked you if that was the conclusion.

Mr. Herman: Why don't you—instead of looking at it as lawyers, which you are, and I suppose you have one point of view, and that is from a legal approach—let us [fol. 100] try to look upon this from the practical approach, that is, from the point of view of the employees and the employer.

If you are going to use a method to determine the question on the basis of questioning the individuals, John Jones will come up, and whoever is going to question him, and say, "Did you designate Local 255 to be your collective bargaining agent," and whichever way the answer is, it would be only one or two that said yes, or he would say no, and the

man is marked. At best, you are going to have a house divided. There will be some who will say, yes; and there will be some who will say, no, and it will be on the record as to what they said. It is irrevocable and it cannot be changed.

Now, whether 51 per cent say yes, or 75 per cent say yes, or 51 per cent say no—the fact of the matter is that, from here on out, from the moment you start asking those questions, or that question, and start getting answers, your employees are only being divided, and you are going to create a condition amongst the employees, whatever the result is—whether collective bargaining ensues or picketing ensues or the thing is left in suspense.

You are creating two groups of employees, and you are creating a bone for future contention, and from then on it is a question of the "yeses" and the "noes," and they are at constant odds with one another, while you are trying to operate a hotel.

[fol. 101] I think that is the most practical way you want to determine the question. I think the most practical way to do it is to get the people to have a secret ballot, and let them vote, secretly, so you will not know and I will not know, and nobody will know who voted yes and who voted no, and whenever the results of the votes are known, you tear it up and throw it away.

If it is yes, okay, if the majority say yes, fine; if the majority say no, we will not bargain—and I undertake to tell you, that if the majority of the people vote "no" on the question, we will not request bargaining for only those people that we represent, and we will not picket the hotel.

Mr. Sibley: You come here today, as I understand it, contending that you represent employees of a hotel. I met with you on that basis with a reservation that you establish that that is your authority, and you have not, until this moment, given me the names of any persons which you say you represent or contend that you represent.

Mr. Herman: I am suggesting a method for establishing my claim.

Mr. Sibley: Let me make this suggestion. You give me the names of the persons you represent, and then on Thursday we will call those persons in and ask them if you do represent them or you do not represent them.

[fol. 102] I am perfectly willing for Mr. Brown to be present when that occurs, and Mr. Lan.burgh, and Mr. Davis. Let Mr. Brown and Mr. Davis handle it, but that is only as to the persons that you are able to tell me today that you represent.

Mr. Herman: I am suggesting to you, sir, that that method is not a very practical method, from a long range point of view, from the employer and employee relationship. It may be all right for attorneys, but I say to you, it is not the best method for employer and employee relationship.

I would like you to think about it for a while before arriving at a conclusion.

Mr. Sibley: Let me make this suggestion to you, gentlemen. As I told you, Mr. Herman, the first time I met with you, I have advised all of my clients that if your union represents their employees, they must bargain with you, and they have all been advised of that fact.

If your union does not represent the employees, I have advised them that they do not have to bargain with you, under the laws of Florida.

Mr. Brown: We only have one question, Mr. Sibley, whether or not they represent the people.

Mr. Sibley: Now, you say—just a minute, please. You say you want time in which to decide or think over the suggestion that I made, that you furnish me or furnish [fol. 103] these gentlemen with the names of those that you say you represent or your union represents, and then Mr. Brown and Mr. Davis, with no other owners present, unless you have to have somebody identify the workmen of the employers, as they come in, and will ask them if they have authorized Local No. 255 to represent them, and they can answer these two gentlemen, and there can be no difference in the count when they get through. There will be no question about that.

Now, if those that you say you represent, if they all say you represent them, then that gets past that point. Then, I am in a situation, if those that say you represent them are less than 51 per cent, then I find myself, in the next step, faced with a problem of determining whether or not, under the laws of Florida, I must then bargain with you.

I do not intend to make up my mind to do that unless and until we get to that point, and you do not blame me.

I do not know what my decision will be. I am somewhat disturbed about it, frankly, but I would like to get along with it, and if you represent the employees, under the circumstances, which I think will justify the bargaining, you will be bargained with.

Mr. Herman: What you suggested before—the method you suggested is not a practical method, for the purposes of harmonious labor-management relations; that management, by insisting on such a procedure, will be creating the seeds [fol. 104] of dissension for many weeks, months and perhaps even years to come along, among their own employees.

I suggest, instead, a secret ballot to determine the question whether or not Local No. 255 claims to have representation of the majority of the employees, is justified by the wishes of the employees.

Mr. Brown: I would be willing to work with Mr. Davis on that, and we could handle the employees, and they will come to us and deposit their vote right there in a box, in front of us, and I would be perfectly willing to let you count them.

Mr. Sibley: I realize there can be no difference between you and Mr. Davis.

Mr. Brown: That is a Federal procedure, and it could not be any fairer. The Federal government adopted that.

Mr. Sibley: I am only willing, gentlemen, and I think I am within my rights, to have those persons whom you claim to represent, to either, by secret ballot—no; I do not think that is fair. I think they should state to these two gentlemen the people whose names you give me are the people you represent and they should state to these two gentlemen whether or not their claim is verified.

Mr. Herman: I am not questioning the fairness of it. I am only questioning the advisability of using such a method, [fol. 105] and I say to you, before we decide anything, one way or the other, and there is no hurry to make this decision, and I would like the employers to think over the practical results of questioning employees as to certain of their actions, and whether there is a definite yes or no answer that has to be given.

Mr. Sibley: Let me ask you this question. I understand your point. Maybe from a practical viewpoint and management viewpoint, it may be sound. I do not know. I can only look at it from a lawyer's viewpoint, and I have never operated a hotel.

May I suggest that I discuss it with these gentlemen, and I will meet again with you on Monday. Is that agreeable?

Mr. Brown: One other point that you might consider, between now and then, and that is, we ought to know exactly what we are talking about.

For instance, we are not talking about office employees or any person in a managerial capacity.

Mr. Sibley: I understand that.

Mr. Brown: We are talking about certain service employees.

Mr. Herman: I think there is general agreement. We are not talking about—

Mr. Brown: We are talking about only those people, and [fol. 106] that would be the only determining factor that is going to be the majority basis.

Mr. Sibley: I do not know who are the admitted members of your union.

Mr. Herman: We are not talking about the individuals at the moment. We are referring to categories of employees whom we do not claim to represent—the manager, or assistant manager, the confidential secretaries, or payroll clerk, or the auditor—people who are necessarily in an exempt category because they are exempt personnel.

Mr. Sibley: I think you are right about that, but I will give you an answer to that—I am inclined to give you an answer to that.

Mr. Herman: They are not even eligible for union membership. We are not talking about the maitre 'd and the executive chef, or about the assistant manager, or the night manager.

Mr. Brown: As I understand the procedure, your proposition is, Mr. Sibley, that Mr. Davis and I would talk to the people and someone else will identify them.

Mr. Herman: We are going to discuss Monday—

Mr. Brown: I want to know the proposition.

(Thereupon the conference ended.)

Reported by: E. Schwartz, Court Reporter, 921 Seybold Bldg., Miami, Florida

[fol. 107] Reporter's Certificate to foregoing transcript (omitted in printing).

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

AFFIDAVIT—Filed September 16, 1955

STATE OF FLORIDA,
COUNTY OF DADE, *ss.*:

Personally appeared before me, the undersigned authority, Robert L. Turchin, who, being first duly sworn, [fol. 108] deposes and says:

I am president of Robert L. Turchin, Inc., a Florida corp.; Robert L. Turchin, Inc. is engaged in the business of contracting and building.

On or about the 20th of April, 1955, Robert L. Turchin, Inc. entered into a contract with Liflans Corp., a Fla. corp., the owner of the fee title to the property upon which is located the Versailles Hotel, the address of said hotel being 3425 Collins Avenue, Miami Beach, Florida.

This construction project involved the building of an annex to the Versailles Hotel, such annex to consist of 132 rooms. In addition to the building of this annex, the project involved numerous renovations, repairs and improvements to the Versailles Hotel, which presently consists of 144 rooms, together with dining rooms, card rooms, lobbies, cabana club and other customary hotel facilities.

After the work on this project commenced there appeared immediately in front of the premises of the Versailles Hotel a picket line. This picket line consisted of approximately four individuals carrying signs which read, "This hotel refuses to negotiate with Local 255, A.F.L., 1575 Washington Avenue, Miami Beach." This picket line has been present at all times since June 11, 1955.

Upon the commencement of the construction project on April 20, 1955, most of the work consisted of the building of [fol. 109] the new annex, and it was not generally necessary for any of the craftsmen and laborers employed by Robert L. Turchin, Inc., and subcontractors working with Robert L. Turchin, Inc., to actually cross the picket line in order to work upon the hotel premises.

On or about August 27, 1955, the construction project reached the stage where work was commenced in joining the new annex to the old hotel premises, and in making renovations, repairs and improvements to the 144 room building which had, prior to this time, comprised the Versailles Hotel. At this stage of the construction project it became necessary for the craftsmen and laborers employed by Robert L. Turchin, Inc., and by the subcontractors working with Robert L. Turchin, Inc., to cross the picket line in order to continue with and complete the construction project.

Robert L. Turchin, Inc., in pursuing this construction project, has employed the services of various subcontractors, among which are: East Coast Electric Company, Jowein Sheet Metal Co., Inc., Airko Air Conditioning Company, Fixit Plumbing Company, Collins Glass Company, Frank D. Lapp, Reinforcing Steel Placing, and Milone Plastering Co.

These various subcontractors, in order to complete the projects assigned to them, employed the services of various craft and labor unions, including: Airconditioning, Refrigeration and Steamfitters U.A. Local No. 725; Brick-[fol. 110] layers, Masons & Plasterers Union; Carpenters Union Local 993, and Carpenters District Council; Electricians Local Union 349; Ironworkers Union; Glazers Union, Plumbers Local Union 519; and Sheetmetal Workers Union Local 223.

The craftsmen and workers who are members of the above-listed labor unions and who are employed by the subcontractors working on this construction project have been requested by the subcontractors and their foremen in charge of the various phases of work, to enter the Versailles Hotel and complete the work therein, but have refused to cross

the picket line which has been set up and maintained by Hotel Employees Local Union 255.

This picket line is immediately in front of the premises of the Versailles Hotel, and the craftsmen and laborers will not enter the old hotel premises to continue with the completion of the construction project.

In entering into this contract for construction with Liflans Corp. on April 20, 1955, it was represented to Liflans Corp. that the anticipated completion date for the entire project would be on or about November 1, 1955, upon which date there would be completed a large, modern luxury hotel consisting of 276 rooms, together with dining rooms, card rooms, lobbies, cocktail lounge, cabana club and other hotel facilities; and that in reliance on these representations the owners of the hotel premises, Liflans Corp., and the lessees [fol. 111] of the hotel premises, R. S. Levy, Daniel Lifter and J. J. Lansburgh, have planned the opening of the enlarged and improved hotel for on or about November 1, 1955, and have accepted and confirmed numerous reservations for this date and the immediate ensuing period.

As a result of the members of the above-listed labor unions refusal to cross the picket line and enter the premises of the Versailles Hotel, the construction project is at a standstill, and has been since on or about August 27, 1955; and that unless this situation is remedied and the craftsmen and laborers are willing to enter the hotel premises, it will be impossible to complete this project on the anticipated completion date of November 1, 1955.

Further affiant sayeth not.

/s/ Robert L. Turchin.

Subscribed and sworn to before me this 14 day of September, 1955.

/s/ B. A. Rolland, Notary Public, State of Florida at Large. My Commission Expires Nov. 15, 1958.

(N P Seal)

[fol. 112]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

AFFIDAVIT—Filed September 16, 1955

STATE OF FLORIDA,
COUNTY OF DADE, *ss.*:

Personally appeared before me, the undersigned authority, Calvin Kovens, who, being first duly sworn, deposes and says:

I am Secretary of Robert L. Turchin, Inc., a Florida corp., engaged in the business of building and contracting.

On or about April 20, 1955, Robert L. Turchin, Inc. entered into a contract with Liflans Corp., the owner of the property upon which is located the Versailles Hotel, the address of said hotel being 3425 Collins Avenue, Miami Beach, Florida.

This construction contract provided for the building of a 132-room addition to the Versailles Hotel, which presently consists of 144 rooms. The project also called for numerous renovations, repairs and improvements to the old Versailles Hotel building.

Construction on this project was commenced on or about April 20, 1955, and on or about June 11, 1955, there appeared in front of the Versailles Hotel a picket line consisting of approximately four individuals carrying signs [fol. 113] which read, "This hotel refuses to negotiate with Hotel Employees Union Local 255, A.F.L." This picket line has been present continuously since that date.

In the early stages of this construction project the work was primarily confined to the building of the new 132-room addition, and during this state of construction it was not necessary generally for any of the craftsmen or laborers working on the project to actually cross the picket line in front of the Versailles Hotel, which hotel was in operation and serving numerous hotel guests.

On or about August 27, 1955, the construction project had progressed to the stage where it was necessary to join and tie in the new 132-room addition with the old hotel premises to complete renovations, repairs and improve-

ments in the old hotel premises; and that on or about this date the Versailles Hotel was closed and discontinued serving hotel guests; that in order to complete the hotel project after this date it became necessary for the craftsmen and laborers employed by Robert L. Turchin, Inc., and the various subcontractors, to cross the picket line, in order to enter the premises of the Versailles Hotel.

In this construction project Robert L. Turchin, Inc. has employed the services of various subcontractors, as follows: East Coast Electric Company; Jowein Sheet Metal Co., Inc.; Airko Air Conditioning Company; Fixit Plumbing Company; Collins Glass Company; Frank D. Lapp, Rein- [fol. 114] forcing Steel Placing; and Milone Plastering Company.

These various subcontractors have employed the services of members of certain labor unions, including: Airconditioning, Refrigeration and Steamfitters U.A. Local No. 725; Bricklayers, Masons & Plasterers Union; Carpenters Union Local 993, and Carpenters District Council; Electricians Local Union 349; Ironworkers Union; Glazers Union; Plumbers Local Union 519; and Sheetmetal Workers Union Local 223.

The members of these labor unions employed by the subcontractors will not cross the picket line and enter the premises of the Versailles Hotel, and at this stage of construction, in order to continue with and complete the construction project, it is necessary that the laborers enter the premises of the Versailles Hotel; and because of the refusal of the members of the above-named labor unions to cross the picket line, upon being requested by the subcontractors and their foremen to do so, the construction project is at a standstill.

In entering into the contract with Robert L. Turchin, Inc., the owners and lessees of the Versailles Hotel were informed that the anticipated date of completion of the entire project would be on or about November 1, 1955; and that as a result of these representations the owners and lessees of the hotel premises have accordingly made plans for opening the enlarged and improved hotel on this date. [fol. 115] Unless the members of the labor unions employed by the subcontractors on this job are willing to enter the premises of the Versailles Hotel, it will be impossible for

the construction project to be completed on the anticipated completion date of November 1, 1955.

The owners of the Versailles Hotel, in entering into this contract for enlarging and improving the hotel facilities, have incurred obligations in excess of one million, five hundred thousand dollars, and over two-thirds of this expenditure was incurred as a result of the contract with Robert L. Turchin, Inc.; and Robert L. Turchin, Inc., in turn, has incurred heavy financial obligations in order to comply with the contract with the owners of the hotel premises and complete the construction project by the anticipated completion date of November 1, 1955.

As a result of the picket line which was established and has been maintained since June 11th, not only have the owners and lessees of the premises suffered irreparable damages, but Robert L. Turchin, Inc., has and continues to suffer irreparable damages in loss of time by having workers remain idle, but on the company's payrolls, and in loss of good will which has been established by Robert L. Turchin, Inc.'s reputation for efficiently and capably finishing construction projects on schedule.

Robert L. Turchin, Inc. has had no labor dispute with any of its employees, nor have the subcontractors employed on this job had any labor dispute with the members of the [fol. 116] various labor unions employed by them during this construction job; and the refusal of the members of the above-named labor unions to enter the premises of the Versailles Hotel and continue with the construction project is due solely to the presence of the picket line maintained by Hotel Employees Union, Local 255, and is due to no dispute between the members of these unions and Robert L. Turchin, Inc. or any of the subcontractors employed by them.

Further affiant sayeth not.

/s/ Calvin Kovens.

Sworn to and subscribed before me this 14 day of September, 1955.

/s/ B. A. Rolland. Notary Public, State of Florida at Large. My Commission Expires November 15, 1958.

(N. P. Seal)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

AFFIDAVIT—Filed September 16, 1955

STATE OF FLORIDA,
COUNTY OF DADE, *ss.*:

Personally appeared before me, the undersigned au-
[fol. 117] thority, Bernard B. Fow, who, being first duly sworn, deposes and says:

I am vice president of Airko Airconditioning Company, a Florida corporation; and that I am a partner in Airko (not Inc.), a firm engaged in the business of installing air-conditioning equipment.

On or about May 2, 1955, Airko Company entered into a contract with Liflands Corp., the owner of the premises upon which is located the Versailles Hotel. Under the terms of this agreement, Airko Air Conditioning was to install the air conditioning equipment in a new addition which was being added to the Versailles Hotel, such new addition to consist of 132 rooms.

Subsequent to this original agreement, a contract was entered into whereby Airko Air Conditioning was also employed to install central air conditioning for the entire old hotel building, which consisted of 144 rooms.

In entering upon this job, Airko Air Conditioning first started upon the air conditioning of the new 132 room addition. On or about June 11, 1955, a picket line was established in front of the old Versailles Hotel. This picket line consisted of approximately four individuals carrying signs reading: "This hotel refuses to negotiate with Local 255, A.F.L."

On or about August 26th or 27th the old hotel building was closed and the hotel discontinued accommodating any
[fol. 118] guests. Immediately after this date we made an attempt to begin work upon the project of installing central air conditioning equipment in the old hotel building. Airko Air Conditioning Company, in installing its air conditioning equipment, employed the services of certain craftsmen and laborers who are members of the Air conditioning, Refrigeration and Steamfitters U.A. Local No. 725.

The members of this labor union employed by Airko Air Conditioning Company refuse to cross the picket line which has been established by Hotel Employees Union No. 255. The progress of the contract for the installation of central air conditioning system is therefore at a standstill.

In order to complete the air conditioning project for which Airko Air Conditioning Company has contracted with Liflands Corp., Airko has entered into a contract with Jowein, Inc., a Florida corp., engaged in business as a sheet metal contractor. Jowein, Inc., has engaged the services of various craftsmen who are members of the Sheetmetal Workers Local Union No. 223; and that to complete the over-all job of installing central air conditioning at the Versailles Hotel, it is necessary for the members of this union employed by Jowein, Inc., to cross the picket line established by Hotel Employees Local Union No. 255, in order to enter the premises of the Versailles Hotel; and the members of this labor union, as well as the members of Air conditioning, Refrigeration and Steamfitters Local No. 725, refuse to cross the picket line, and thus the continuation [fol. 119] of the job of installing the central air conditioning at the Versailles Hotel is at a standstill.

Robert L. Turchin, Inc. has contracted for the construction of the new addition to the Versailles Hotel, and for certain renovations and repairs on the old hotel building, and the anticipated completion date on this construction project is on or around the first of November, 1955; and under Airko Air Conditioning Company's agreement with Liflands Corp., this company is obligated to finish the air conditioning project promptly, in order that the entire enlarged hotel will be completed in every respect and ready for opening on November first.

Unless the members of the two unions, the Air Conditioning, Refrigeration and Steamfitters Local No. 725, and the members of the Sheetmetal Workers Local No. 223, will enter the premises of the Versailles Hotel, it will be impossible for Airko Air Conditioning Company to complete this project on schedule.

In order to complete this project, Airko Air Conditioning has engaged the services of numerous additional workmen; and the refusal of the members of the unions to cross

the picket line and work on the premises of the Versailles Hotel has resulted in numerous workmen engaged by our company remaining idle, or being placed on other projects upon which we are engaged, where their services are em-
[fol. 120] ployed more or less needlessly and at some loss to the company.

In the over-all operation of our company, we have contracted for a number of jobs in the immediate future, anticipating the completion date of this job on schedule, and if we delayed in the completion of this project by the refusal of the union members to work on the premises of the Versailles Hotel, the company will incur great loss by virtue of obligations having been incurred on other projects which are to be commenced in the period immediately after November 1, 1955.

Further affiant sayeth not.

/s/ Bernard B. Fow

Sworn to and subscribed before me this 14th day of September, 1955.

/s/ B. A. Rolland, Notary Public, State of Florida at Large. My Commission Expires Nov. 15, 1958.

(Notary Seal)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

[fol. 121]

AFFIDAVIT—Filed September 16, 1955

STATE OF FLORIDA,
COUNTY OF DADE, *ss.*:

Personally appeared before me, the undersigned authority, Edward F. Weinstein, who, being first duly sworn, deposes and says:

That I am the vice president of Jowein, Inc., a Florida corp., and Jowein, Inc. is engaged in the business of designing, prefabricating and installing sheet metal products; Robert L. Turchin, Inc., a Florida corporation engaged in

business as a contractor and builder, has entered into a contract with the owners of the premises upon which the Versailles Hotel is located, to construct a 132-room addition to this hotel, and to make certain repairs and renovations of the old Versailles Hotel building, which consists of 144 rooms; Jowein, Inc., on or about the middle of May, 1955, entered into a contract, as subcontractor, with Robert L. Turchin, Inc., to install toilet and kitchen ventilation and metal ceilings in the corridors; at approximately the same time Jowein, Inc. entered into a contract with Airko Air Conditioning Company to do the sheet metal work necessary in a project whereby Airko Air Conditioning Company had contracted to install air conditioning in the new 132-room addition to the Versailles Hotel, and to install a central air conditioning system in the old 144-room hotel building; that Jowein, Inc. started work upon the contracts [fol. 122] entered into with Robert L. Turchin, Inc., and Airko Air Conditioning Company on or about the middle of May, 1955; and that on or about June 11, 1955, a picket line appeared in front of the premises of the Versailles Hotel, the picket line consisting of approximately four men, and carrying signs which read: "This hotel refuses to negotiate with Local Union 255, A.F.L."

Jowein, Inc. experienced no difficulties in the work engaged to be done upon the new 132-room addition to the hotel, but that upon attempting to commence work upon the old premises of the Versailles Hotel, the work of Jowein, Inc. became impossible because certain craftsmen employed by Jowein, Inc. refused to cross the picket line established by Hotel Employees Union Local 255, and thus refused to enter the premises of the Versailles Hotel; that in the conduct of its business generally, and in work upon the contracts entered into with Airko Air Conditioning Company and Robert L. Turchin, Inc., Jowein, Inc. employs exclusively craftsmen who are members of Sheet Metal Workers Union Local 223, and that all of the craftsmen now employed by Jowein, Inc. are members of this union; that work upon the premises of the Versailles Hotel is now at a standstill as a result of the refusal of the craftsmen employed by Jowein, Inc. to cross the above-described picket line; that in a contract entered into by Robert L. Turchin, Inc. with

the owners of the premises upon which is located the Ver- [fol. 123] sailles Hotel, Robert L. Turchin, Inc. represented to the owners and lessees of the hotel premises that the entire construction project would be completed on or about November 1, 1955; that the nature of the work which Jowein, Inc. has contracted to do for Airko Air Condition (sic) Company, and Robert L. Turchin, Inc., is such that it is necessary for the installations to be made by Jowein, Inc. to be completed before certain other phases of the over-all construction project can be begun; that the present standstill in the work to be done by Jowein, Inc. will render it impossible for other work to proceed on schedule, and it will thus make it impossible for Robert L. Turchin, Inc. to finish the entire construction project by November 1, 1955; that in order to complete those contracts on schedule, Jowein, Inc. has employed certain extra craftsmen; that the refusal of these craftsmen to cross the picket line, upon being requested to do so by Jowein, Inc., has resulted in loss to Jowein, Inc., since the men either remain idle or are placed in jobs which results in their being used in a less advantageous manner to Jowein, Inc. than was anticipated at the time of their hiring.

Further affiant sayeth not.

/s/ Edward F. Weinstein

Sworn to and subscribed to before me this 15th day of September, 1955. /s/ B. A. Rolland, Notary Public, State of Florida at Large. My Commission Expires Nov. 15, 1958.

(Notary Seal)

[fol. 124]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

AFFIDAVIT—Filed September 16, 1955

Personally appeared before me, the undersigned authority, Jack Mintzer, who, being first duly sworn, deposes and says:

I am vice president of Miami Station, Inc., a Florida corporation. Miami Station, Inc. is engaged in the plumbing contracting business.

Robert L. Turchin, Inc., contractor and builder, has entered into a contract with the owner of the property upon which is located the Versailles Hotel, 3425 Collins Avenue, Miami Beach, Florida, for the enlargement, improvement and renovation of the hotel premises. Miami Station, Inc. has been engaged as a subcontractor upon this job to install certain plumbing fixtures and other mechanical work.

The craftsmen and workers employed by this corporation are members of certain labor organizations, Air Conditioning, Refrigeration and Steamfitters U.A., Local Union No. 725, and Plumbers Local Union No. 519.

Since on or about June 11, 1955, there has been maintained upon the premises of the Versailles Hotel a picket line. The pickets carry signs stating, "This hotel refuses to negotiate with Hotel Employees Union Local No. 255, A.F.L."

[fol. 125] In the early stages of the work upon the construction project being conducted upon the premises, work was confined to the building of the new annex, and in order to reach the job it was not necessary for craftsmen and workers to cross the above-described picket line, which was maintained in front of the old hotel building. Since on or about August 27, 1955, the completion of the over-all construction project makes it necessary that the craftsmen and workers enter the premises of the old hotel building, in order to join the new annex to the old building, and in order to make certain repairs and renovations to the old building.

The craftsmen and workers employed by this company have been requested to enter the premises of the old hotel building, and continue with the completion of the construc-

tion job which we have undertaken. The members of the above-named labor unions employed by Miami Station, Inc. have, however, refused to cross the picket line when requested to do so. The installation of the plumbing and other mechanical work is therefore rendered impossible, and the job is at a standstill.

Further affiant sayeth not.

/s/ Jack Mintzer

Subscribed and sworn to before me this 15th day of September, 1955. /s/ R. H. Libman, Notary Public, State of Florida at Large. My commission expires Feb. 17, 1959. Bonded by American Surety Co. of N.Y.

(Notary Seal)

[fol. 126]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY

AFFIDAVIT—Filed September 16, 1955

STATE OF FLORIDA,
COUNTY OF DADE, *ss.*:

Personally appeared before me, the undersigned authority, Elmar Raamat, who, being first duly sworn, deposes and says:

I am a painting and decorating contractor; that I have a contract to do painting work on the Versailles Hotel; that I am a member of Painters Union Local #365, and the men employed by me are members of this union.

I am willing to do the painting job on the Versailles Hotel, but I will not, and my men refuse to cross the picket line set up by Hotel Employees Union No. 255.

Further affiant sayeth not.

/s/ Elmar Raamat

Subscribed and sworn to before me this 14th day of September, 1955. /s/ B. A. Rolland. Notary Public, State of Florida at Large. My Commission Expires Nov. 15, 1958.

(Notary Seal)

[fol. 127]
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

ORDER DENYING TEMPORARY INJUNCTION—
September 22, 1955

This cause came on to be heard September 16, 1955 upon Plaintiff's application for Temporary Restraining Order prohibiting the picketing of Plaintiff's hotel, the Versailles. This picketing has been in progress since June 11, 1955. Affidavits were submitted by the respective parties and the cause argued at length. The Court being thereby and otherwise fully informed in the premise finds that the picketing has at all times been peacefully conducted and for the lawful purpose of inducing the employer to recognize and negotiate with the Defendant's Union as the representative of such employees as are members of Defendant union. I find further that the union established that a majority of the employees had chosen it as their representative and that the labor organization had also informed the employer of the object to be accomplished by the picketing and that a fair opportunity was afforded to the employer to engage in negotiations; wherefore it is

Ordered, Adjudged and Decreed that the application for Temporary Restraining Order be and the same is hereby denied.

Done and Ordered in Chambers, Miami, Florida this 22 [fol. 128] day of September, 1955.

/s/ Robert L. Floyd

. . . . . .

[fol. 132]

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

R. S. LEVY, DANIEL LIFTER; and J. J. LANSBURGH as Trustee for THE ELLEN LANSBURGH TRUST, THE MORRIS LANSBURGH, JR. TRUST, and THE LEONARD LANSBURGH TRUST, Petitioners,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, of the American Federation of Labor, and DAVID HERMAN, CLARENCE L. SMITH, ALBERT H. BERLIN and HENRY K. MICHEL, individually and as business agents and officers thereof, Respondents.

PETITION FOR ISSUANCE OF WRIT OF CERTIORARI—
Filed September 26, 1955

The Petitioners, R. S. Levy, Daniel Lifter and J. J. Lansburgh as Trustee for The Ellen Lansburgh Trust, The Morris Lansburgh, Jr. Trust and The Leonard Lansburgh Trust, file this, their Petition for the issuance of a Writ of Certiorari by the Supreme Court of Florida, directed to the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, to review an order entered by the Honorable Robert L. Floyd, wherein the Petitioners' application for a temporary injunction against Hotel Em-
[fol. 133] ployees Union, Local No. 255, of the American Federation of Labor, and the other Respondents abovenamed, restraining the Respondents from picketing the Petitioners' Hotel premises, was denied, and for such Petition alleges:

I.

On June 15, 1955, the Petitioners, plaintiffs below, filed their complaint for injunctive and other relief against the Respondents (Tr. 1), alleging that the Respondents had established a picket line in front of the hotel leased and operated by the Petitioners, and that such picket line was illegal for the reasons particularly described in the com-

plaint. On July 6, 1955, the Respondents, defendants below, filed their answer to the Petitioners' complaint (Tr. 27) and on July 28, 1955, the Respondents filed a supplemental answer (Tr. 56), attempting to establish that the Petitioners were engaged in interstate commerce and challenging the jurisdiction of the court. On August 4, 1955, the Petitioners filed a motion to dismiss that portion of the Respondents' answer seeking affirmative relief (Tr. 60), and on August 4, 1955, the Petitioners filed a motion to strike the supplemental answer of the Respondents (Tr. 59). On September 2, 1955, the Petitioners filed an amendment to their complaint for injunctive and other relief, setting forth events occurring subsequent to the filing of the original complaint and alleging that the same served to increase the irreparable damages to the Petitioners, caused by the illegal picket line, and that the picket line was, because of such events, rendered illegal for reasons in addition to those set forth in the original complaint (Tr. 61). The Petitioners applied for temporary injunction, predicated upon their sworn bill of complaint and sworn amendment to complaint. On September 13, 1955, an order was [fol. 134] entered by the Circuit Judge, setting the hearing upon Petitioners' application for temporary injunction for September 16, 1955, and ordering that evidence should be submitted in the form of affidavits rather than by witnesses. The Petitioners filed affidavits in support of their application for temporary injunction. The Respondents filed no counter-affidavits, relying upon the affidavit of the Respondent, David Herman, attached to and made a part of their answer, as their sole evidence. On September 22, 1955, the Circuit Court (Judge Robert L. Floyd) entered an order denying the temporary injunction (Tr. 127).

II.

The Petitioners are lessees of the Versailles Hotel in Miami Beach, Florida. The value of their leasehold interest in (sic) in excess of $1,500,000.00. The Petitioners are obligated to pay an annual rental of $141,000.00, and have posted with the owner of the premises, Liflans Corp., a Florida corporation, a deposit of $50,000.00 to guarantee per-

formance of their obligations as Lessees. The Petitioners employ 95 employees, rendering services as waiters, bell boys, maids, elevator operators, cooks, and other similar duties (Tr. 2-5). The Petitioners have had no labor dispute with their employees concerning wages, hours, working conditions or any other phase of employee-employer relationship, afford their employees a satisfactory standard of pay, hours of work and working conditions, and have received no complaints from employees with reference to wages, hours or working conditions (Tr. 4).

III.

The Respondents, in order to create for their own use and benefit a lucrative labor organization, have organized Hotel [fol. 135] Employees Union, Local No. 255 of the American Federation of Labor. The Respondents have used coercive and intimidating methods to force the employees of the Petitioners to join their union and have attempted to apply economic pressure upon the petitioners to force the Petitioners to negotiate with the Union. *The Respondents have presented to the Petitioners no satisfactory and trustworthy proof that they represent the employees of the Versailles Hotel and the Respondents do not represent these employees* (Tr. 7-8).

IV.

The Petitioners have never refused to negotiate with the Respondent union but on the contrary, have invited and urged the Respondent union to present to them some satisfactory and trustworthy proof that it, in fact, represents the Petitioners' employees. The Petitioners designated Marion E. Sibley, an attorney at law, as their agent and authorized him to meet with the Respondent, David Herman, one of the union's organizers. A conference was held on May 20, 1955 as scheduled, in the office of Marion E. Sibley at which there were present Marion E. Sibley, Darrey A. Davis, a law partner of Mr. Sibley, the Petitioner, Daniel Lifter, Morris Lansburgh, the general manager of the Versailles Hotel, the Respondent, David Herman, and J. W. Brown, an attorney for the Respondent union (Tr. 85). Mr.

Sibley offered to negotiate with the Respondent union if the union would furnish satisfactory and trustworthy proof that it, in fact, represented the employees of the Versailles Hotel but the Respondent union failed and refused to furnish Mr. Sibley with proof that it represented any one of the Petitioners' employees. Mr. Sibley suggested to Mr. Herman a formula for determining the question of representation, suggesting that the employees of the Versailles Hotel, [fol. 136] who the union claimed had designated it as their bargaining representative, appear before Mr. Darrey A. Davis and before Mr. J. S. Brown and signify whether or not they designated the Respondent union as their bargaining agent. The union, through the Respondent, David Herman, proposed that a secret ballot election should be held among all the Petitioners' employees to determine whether they would designate the union as their representative (Tr. 103). The conference between Marion E. Sibley and David Herman was adjourned but was scheduled to reconvene upon Monday, May 23, 1955, for the purpose of receiving an answer to the suggested procedure proposed by Mr. Sibley. Marion E. Sibley held himself available at his office throughout May 23, 1955 for the purpose of recommencing the discussions. Neither David Herman nor any other person communicated with Marion E. Sibley on behalf of Local No. 255 on the 23rd day of May, 1955, or at any other time in regard to this matter, and no person ever sought to continue this conference on behalf of Local No. 255 as agreed (Tr. 86). The Petitioners heard no more from the Respondents until a communication dated June 6, 1955, which was addressed to Morris Lansburgh, general manager of the Versailles Hotel, and signed by the respondent, David Herman. This communication consisted of a letter signed by the Respondent, David Herman, demanding that the Petitioners meet with and negotiate with the Respondent union, an instrument entitled: "Request to Settle Grievances and Complaints" and an instrument, signed by one Paul J. Weiss, stating that an examination of the union's records reveals that 59 of "your employees" are members of Local No. 255 (Tr. 24). The communication of June 6, 1955 did not inform the Petitioners of the name of a single employee of the Versailles Hotel who, the Respondent

union claimed, had designated it as his bargaining agent, [fol. 137] nor was there anything in this communication which the Petitioners, as reasonable and prudent employers, would or could accept as satisfactory and trustworthy proof that their employees had designated the Respondent union to bargain for them.

Morris Lansburgh, the general manager of the Versailles Hotel, replied to the above-described communication of June 6, 1955, again requesting that the union furnish trustworthy proof that the Petitioners' employees had designated the union to represent them (Tr. 25).

On June 11, 1955, the Respondents established a picket line in front of the Versailles Hotel, consisting of approximately four individuals, carrying placards stating: "This hotel refuses to negotiate with Hotel Employees Union, Local No. 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach." (Tr. 10).

V.

The Petitioners have at all times remained ready to negotiate with the Respondent union upon the presentation of satisfactory and trustworthy proof that the union represents their employees. The Petitioners have never refused to negotiate; therefore, the contents of the pickets' signs is false and libellous.

VI.

The presence of this illegal picket line since June 11, 1955, has caused the Petitioners irreparable damage. The Petitioners have been forced to cancel reservations for guests which had been accepted and confirmed because the false publicity has caused the hotel guests to believe that the hotel is not rendering its usual satisfactory hotel services.

[fol. 138]

VII.

The owner of the Versailles Hotel has entered into a contract with Robert L. Turchin, Inc., contractor and builder, whereby an addition, consisting of 132 new rooms, is being annexed to the Versailles Hotel, which previously consisted

of 144 rooms, and whereby certain renovations and repairs are being made to the old hotel premises. The promised completion date for this construction project is November 1, 1955, and the petitioners, in reliance upon this fact, have accepted and confirmed numerous reservations for the enlarged and improved hotel on November 1, 1955, and for the immediate ensuing period (Tr. 61). On May 18, 1955, the Petitioner, Daniel Lifter, together with Morris Lansburgh, general manager of the Versailles Hotel, met with Respondent, David Herman, and informed him of the above-described construction project. It was urged upon Mr. Herman that if the Respondent union anticipated making demands upon or claiming any grievances against any of the hotels in which Petitioners held a financial interest, that measures he might deem it advisable to take, such as striking or picketing, should be confined to hotels other than the Versailles since any such action with regard to the Versailles Hotel would not only cause irreparable damage to the Petitioners but would also cause irreparable damage to the contractor and sub-contractors employed upon the construction job, to the many craftsmen and workers employed upon the building project and to the general community (Tr. 61).

VIII.

On August 27, 1955, the Versailles Hotel was closed and ceased operation as a hotel and ceased to accommodate any hotel guests. This was necessary in order to join the old [fol. 139] hotel facilities with the new addition. Upon this date it became necessary for the many craftsmen and laborers employed by the contractor, Robert L. Turchin, Inc., and the sub-contractors employed upon the construction project, to cross the picket line which the Respondent union has illegally maintained upon the Petitioners' premises in order to enter the old hotel premises and complete the construction project. The contractor, Robert L. Turchin, Inc., and the sub-contractors employ many craftsmen and laborers, such as air-conditioning workers, glass workers, plumbers, painters and sheet metal workers. These craftsmen and laborers have, together with the general public, been misled by the false and libellous statements of the Respondents that the Petitioners refuse to negotiate with the Respondent

union and have refused to cross the picket line when requested to do so (Tr. 107). The construction project is at a standstill, resulting in the irreparable damage to the owners of the hotel premises, the Petitioners, the contractor and sub-contractors employed on the job, the many craftsmen and Laborers who are being deprived of profitable work because of the Respondents' illegal actions and false and libellous assertions and the general public, which is being deprived of the accommodations of an enlarged and improved hotel to serve the growing needs of the community.

IX.

On June 11, 1955, the date upon which the illegal picket line was established by the Respondents, there had been submitted to the Petitioners absolutely no reliable evidence that the Respondent union represented a single employee. Upon this date there had been presented to the Petitioners nothing other than the assertion by the Respondents that they represented the Petitioners' employees, plus the instrument signed by one Paul J. Weiss, stating that an examination of [fol. 140] the union's records reveals that "your employees" are members of Local No. 255 (Tr. 24). This instrument does not reveal what records were examined, does not disclose a single name of an employee and from the face of this instrument, it is impossible to determine whether or not a single individual purportedly represented by the union is, in fact, an employee of the Petitioners (Tr. 24). In the face of F.S.A. 447.03, which declares that employees shall have the right to bargain collectively through representatives of their own choosing, no reasonable and prudent employer would have been justified in bargaining with the union upon the strength of this instrument, and this was the only alleged proof of representation presented to the Petitioners prior to the establishment of the picket line on June 11, 1955. The answer of the Respondents with the affidavit of the Respondent, David Herman, and certain alleged union membership cards, was not filed until long after the establishment of the illegal picket line on June 11, 1955, the date upon which the Petitioners were forced to make their decision. It is impossible to comprehend upon what evidence the trial court based its finding that the union established

that a majority of the employees had choosen it as their representative (Tr. 127).

The Petitioners assert that the order of the lower court, denying to the Petitioners a temporary injunction, is erroneous for the following reasons:

(a) Because the record discloses that the picketing of the Petitioners' hotel premises by the Respondents is admittedly for an illegal purpose, in that it is an attempt to force the Petitioners to negotiate with the Respondent union in the absence of the union's presenting any satisfactory proof that it, in fact, represents a single employee of the Petitioners'.

[fol. 141] (b) Because the record discloses that the picketing of the Petitioners' hotel premises is carried on with a background of threats, intimidation and coercion.

(c) Because the record discloses that the picketing of the Petitioners' hotel premises, together with the other publicity created by the Respondents, is false and libellous and is a fraudulent scheme to force the Petitioners to sign an illegal contract with the Respondents.

(d) Because the record discloses that the picketing of the Petitioners' hotel premises is an attempt to deprive the Petitioners' employees of the rights guaranteed to them by Section Twelve of the Bill of Rights of the Constitution of the State of Florida.

(e) Because the record discloses that the picketing of the Petitioners' hotel premises is illegal since there is no hotel operation upon the picketed premises but only a construction job and the picketing is an illegal attempt to coerce the Petitioners into signing an illegal contract for the employees who will operate the Petitioners' enlarged and improved hotel.

(f) Because the record discloses that the picketing of the Petitioners' hotel premises is a picketing beyond the area of any industry within which any labor dispute exists contrary to Florida Statutes Annotated 447.09.

(g) Because the record discloses that the picketing is illegal because the Respondents failed to afford to the Peti-

tioners a fair opportunity to engage in negotiations but instead broke off negotiations and failed to appear at a scheduled meeting with the designated agent of the Petitioners.

(h) Because the record discloses that the picketing of the Petitioners' hotel premises by the Respondents is causing [fol. 142] irreparable injury to the Petitioners, to the owners of the hotel premises, to the general contractor and the many sub-contractors employed upon the present construction project, to the numerous craftsmen and laborers employed by the contractor and the sub-contractors, and to the general public.

Wherefore, the Petitioners pray this Honorable Court to issue its Writ of Certiorari, quashing the order of the Circuit Court and prays that this Honorable Court will grant to the Petitioners a constitutional Writ, enjoining the Respondents from maintaining the pickets at Petitioners' place of business.

Patton & Kanner and Sibley & Davis, By /s/ Stuart W. Patton, Attorneys for Petitioners.

* * * * * * *

[fol. 144]

IN THE SUPREME COURT OF FLORIDA
JUNE TERM, A. D. 1955—SPECIAL DIVISION A.
IN CHANCERY 180588
Case No. 26,798

R. S. LEVY, DANIEL LIFTER; and J. J. LANSBURGH as Trustee for THE ELLEN LANSBURGH TRUST, THE MORRIS LANSBURGH, JR. TRUST, and THE LEONARD LANSBURGH TRUST, Petitioners,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, of the American Federation of Labor, and DAVID HERMAN, CLARENCE L. SMITH, ALBERT H. BERLIN and HENRY K. MICHEL, individually and as business agents and officers thereof, Respondents.

A Writ of Certiorari to the Circuit Court for Dade County, Robert L. Floyd, Judge.

Patton & Kanner and Sibley & Davis, for Petitioners.

Gramling & Gramling, J. W. Brown and Ben Gettler, for Respondents.

OPINION, PER CURIAM—Filed December 14, 1955

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the Circuit Court for Dade County in said cause bearing date September 22nd, 1955, denying petitioner's prayer for temporary restraining order against the respondents and the same having been considered, it is ordered that Writ of Certiorari be and is hereby awarded and the said order is reversed with directions to enter the injunction order prayed for on authority of Boca Raton Club, Inc. et al. vs. Hotel Employees Union, Local No. 255, (A. F. of L.) et al., 83 So. 2d 11 (Fla.).

Drew, C. J., Terrell, Roberts and O'Connell, JJ., Concur.

* * * * * * *

[fol. 146]

IN THE SUPREME COURT OF FLORIDA
JUNE TERM, A. D. 1955—SPECIAL DIVISION A.

R. S. LEVY, DANIEL LIFTER, et al., Petitioners,

—v.—

HOTEL EMPLOYEES UNION, LOCAL NO. 255, of the American Federation of Labor, and DAVID HERMAN, CLARENCE L. SMITH, ALBERT H. BERLIN and HENRY K. MICHEL, individually and as business agents and officers thereof, Respondents.

JUDGMENT—December 14, 1955

Counsel for Petitioners having filed in this cause Petition for Writ of Certiorari and having been considered, it is ordered by the Court that said Petition be and the same is

hereby granted and the said order of the Circuit Court is reversed with directions to enter the injunction order prayed for on authority of Boca Raton Club, Inc., et al., vs. Hotel Employees Union, Local No. 255 (A. F. of L.) et al., 83 So. 2d 11 (Fla.); it is further ordered by the Court that the Petitioners do have and recover of and from the Respondents their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

* * * * * * *

[fol. 148]

IN THE SUPREME COURT OF FLORIDA

Book 1218—Page 584

MANDATE FROM SUPREME COURT OF FLORIDA—
December 30, 1955

To the Honorable, the Judges of the Circuit Court for the Eleventh Judicial Circuit of Florida, Greeting:

Whereas, Lately in the Circuit Court of the Eleventh Judicial Circuit, in and for the County of Dade in a cause wherein

R. S. LEVY, et al, were plaintiffs
(Circuit Court #180588-I—Chancery)

and

HOTEL EMPLOYEES UNION, LOCAL NO. 255, OF THE AMERICAN FEDERATION OF LABOR, and DAVID HERMAN, CLARENCE L. SMITH, ALBERT H. BERLIN and HENRY K. MICHEL, individually and as business agents and officers thereof, were defendants

the Order of said Circuit Court was rendered Sept. 22, 1955 as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

And Whereas, at the June Term of said Supreme Court holden at Tallahassee, A. D. 1955, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 14th day of December A. D. 1955 the said Supreme Court rendered its opinion and judgment in said cause as per copy thereof hereto attached and made a part hereof.

In Consideration Whereof, It Is Ordered by the Court that the Petitioners do have and recover of and from the Respondents costs in this behalf expended herein taxed at Twelve Dollars, and that all other costs shall be taxed in the court in which the appeal was entered, therefore,

You Are Hereby Commanded, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Order of the Circuit Court notwithstanding.

Witness, The Honorable E. Harris Drew, Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 30th day of December, 1955.

/s/ Gwyte P. McCord
Clerk Supreme Court of Florida.

[fol. 149]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY NO. 180588-G.

R. S. LEVY, et al., Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, of the American Federation of Labor, et al., Defendants.

PRELIMINARY INJUNCTION—December 19, 1955

This Cause came on to be heard on September 16, 1955, upon plaintiffs' application for preliminary injunction pro-

hibiting the picketing of plaintiffs' hotel, the Versailles. Affidavits were submitted in support of the plaintiffs' sworn bill of complaint and the defendants filed their sworn answers, together with supporting affidavits. Argument of counsel for the respective parties was heard and this Court entered its order on September 22, 1955, denying the plaintiffs' application for preliminary injunction. On September 22, 1955, the plaintiffs filed in the Supreme Court of Florida their Petition for the Issuance of a Writ of Certiorari, and on December 14, 1955, the Supreme Court of Florida granted the certiorari and the order of this Court of September 22, 1955 was reversed, with directions to enter the injunction prayed for on the authority of *Boca Raton Club, Inc.* v. *Hotel Employees Union, Local 255,* 83 So. 2d 11, said decision being rendered by the Supreme Court of Florida on October 15, 1955.

Accordingly, It Is Ordered As Follows:

1. That the defendants, and each of them and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from picketing or causing to be picketed the Versailles Hotel, its environs or approaches.

[fol. 150] 2. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from carrying or causing to be carried any signs, placards or propaganda of any nature, kind or description in front of the Versailles Hotel, its environs or approaches.

3. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, be and they are hereby enjoined and restrained from publishing or causing to be published any statements to the effect that the plaintiffs, R. S. Levy, Daniel Lifter and J. J. Lansburgh as Trustees for the Ellen Lansburgh Trust, the Morris Lansburgh, Jr. Trust and the Leonard Lansburgh Trust, refuse to negotiate or recognize the defendants as a collective bargaining agent of the employees of the Versailles Hotel.

4. That the defendants and each of them and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from molesting, intimidating, coercing or interfering with the plaintiffs, R. S. Levy, Daniel Lifter and J. J. Lansburgh as Trustee for the Ellen Lansburgh Trust, the Morris Lansburgh, Jr. Trust and the Leonard Lansburgh Trust, their property, their employees or servants.

5. The plaintiffs, or one of them, shall file herein an injunction bond, payable to the defendants in the principal amount of $2,000.00, with good and sufficient surety to be approved by the Clerk of this Court, and conditioned as required by law to pay all costs, damages and expenses which may be suffered by defendants by reason of the issuing of said injunction, if the injunction shall be dissolved or if the bill upon which it was granted be dismissed.

6. This order shall remain in force and effect pending this [fol. 151] cause and until further order of this Court.

Done and Ordered in Chambers at Miami, Florida, this 19th day of December, 1955.

/s/ Robt. L. Floyd, Circuit Judge.

[fol. 152]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY No. 180588-I

R. S. LEVY; DANIEL LIFTER and J. J. LANSBURGH, as Trustee for THE ELLEN LANSBURGH TRUST, THE MORRIS LANSBURGH, JR. TRUST and THE LEONARD LANSBURGH TRUST, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255, (A. F. of L.) et al., Defendants.

STIPULATION IN RE FINAL HEARING—January 5, 1956

It Is Stipulated by and between counsel for the respective parties that for the purposes of final hearing each would

produce as witnesses the several affiants who have heretofore made Affidavits in this cause and that the respective witnesses would testify according to their respective affidavits; that cross examination is waived and it is

Stipulated that final decree be entered by the Chancellor upon the record as now made in the light of this Stipulation.

Witness our hands at Miami, Dade County, Florida this 5th day of January, 1956.

Sibley & Davis and Patton & Kanner, Attorneys for Plaintiff, By Stuart W. Patton.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By Carrington Gramling.

[fol. 153]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY NO. 180588-I

R. S. LEVY; DANIEL LIFTER and J. J. LANSBURGH, as Trustee for THE ELLEN LANSBURGH TRUST, THE MORRIS LANSBURGH, JR. TRUST and THE LEONARD LANSBURGH TRUST, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, (A. F. of L.) et al., Defendants.

FINAL DECREE—December 6, 1955

This Cause coming on to be heard upon final hearing pursuant to the Stipulation of the parties to this cause, and the Court being fully advised in the premises,

It Is Thereupon Ordered, Adjudged and Decreed that the restraining order heretofore rendered against the defendants, and each of them, which order is recorded in Chancery Order Book 1217, Page 58, in the records of the Clerk of the Circuit Court of Dade County, Florida, be and the same is hereby made permanent. The injunction bond

filed herein is hereby cancelled and the principal and surety released of all liability thereunder. The costs of this cause hereby assessed in the sum of $52.50 are taxed against the defendants, for which let execution issue.

Done and Ordered in Chambers, Miami, Florida, this 6th day of December, 1955.

/s/ Robt. L. Floyd, Circuit Judge.

[fol. 154]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180,588-I

R. S. LEVY; DANIEL LIFTER; and J. J. LANSBURGH, as Trustee for the ELLEN LANSBURGH TRUST, THE MORRIS LANSBURGH, JR. TRUST and THE LEONARD LANSBURGH TRUST, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, (A. F. of L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

AMENDED NOTICE OF APPEAL—Filed March 5, 1956

The defendants, Hotel Employees Union, Local No. 255, et al., take and enter their appeal to the Supreme Court of Florida to review the order, judgment or decree of the Circuit Court for Dade County, bearing date the 9th day of January, 1956, entered in the above styled cause and recorded in the records of said Court in Book 1219, Page 413, and all parties to said cause are called upon to take notice of the entry of this appeal.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By /s/ Carrington Gramling.

[fol. 155]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,588-I

R. S. LEVY, DANIEL LIFTER and J. J. LANSBURGH, as Trustee, etc., et al., Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL #255 (A. F. of L.), et al., Defendants.

AMENDED ASSIGNMENTS OF ERROR—Filed March 5, 1956

Come now the defendants by their undersigned solicitors and make the following assignments of error as the errors which they intend to rely upon in the Supreme Court of Florida, for a reversal of the Order (of Final Decree) made herein on the 9th day of January, 1956, and recorded in Chancery Order Book 1219, page 413, of the records of this Court, from which they have appealed.

1. The Court erred in enjoining the defendants in peaceful picketing the business place of the complainants, whereby your defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly, and the right to work or refrain from working as guaranteed within the meaning and scope of Sections I, XII, XIII, XVII, and XIX, Declaration of Rights, Constitution of the State of Florida, and Amendments I, V, XIII, and XIV of the Constitution of the United States of America.

2. The Court erred (in and by such final decree) in finding that the defendants should have established to the [fol. 156] satisfaction of the employer, that the employees had chosen defendant Union as their representative and further requiring that the labor organization must also inform the employer of the object to be accomplished by picketing and afford an unwilling or hostile employer an unspecified waiting period within which to engage in nego-

tiations, all as a prerequisite to the right to strike and picket, whereby your defendants and the Union members became disenfranchised from the exercise of their constitutional guarantee of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments I, V, XIII and XIV of the Constitution of the United States of America.

3. The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

5. The Court erred (in and by such final decree) in enjoining peaceful picketing and the dissemination of information predicated upon an unsubstantiated finding of fact, thereby depriving the members of this Union the guarantees of Amendment (sic) I and XIV of the Constitution of the United States.

6. The Court erred in requiring a direct employer-employee relationship as a prerequisite to picketing and as a pre-requisite to publicizing the existence of a labor [fol. 157] dispute, contrary to Amendments I and XIV of the Constitution of the United States of America.

7. The Court erred (in and by such final decree) in permanently enjoining peaceful picketing and the publicizing of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefor, and beyond the scope of any finding of fact, unsubstantiated or otherwise, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

8. The Court erred (in and by such Final Decree) in ignoring the undisputed evidence that Defendants had

offered to prove representation of plaintiffs' employees and submitted to plaintiffs, prior to the picketing, the sworn statement of a certified public accountant as to such representation, together with a statement of the objectives to be accomplished by collective bargaining and in ignoring the co-relative duty upon the plaintiffs to accept such proof or at least to make reasonable inquiry as to the accuracy of the aforesaid certificate by the certified public accountant, and thereupon entering the aforesaid injunction, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

9. The Court erred (in and by said final decree) in assessing costs against the defendants.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By /s/ Carrington Gramling.

[fol. 160] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 162]

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1957—DIVISION B

Case No. 28,236

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

R. S. LEVY, DANIEL LIFTER and J. S. LANSBURGH, as Trustee etc., et al., Appellees.

An Appeal from the Circuit Court for Dade County, Robert L. Floyd, Judge.

J. W. Brown and Gramling & Gramling, for Appellants.

Patton & Kanner, for Appellees.

OPINION, PER CURIAM—Filed March 15, 1957

Affirmed on authority of Fontainebleau Hotel Corp. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., opinion filed February 1, 1957.

Terrell, C.J., Hobson, Drew and O'Connell, JJ., Concur.

[fol. 164]

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1957—DIVISION B

Case No. 28,236

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

R. S. LEVY, DANIEL LIFTER and J. S. LANSBURGH, as Trustee, etc., et al., Appellees.

JUDGMENT—March 15, 1957

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellees do have and recover of and from the Appellants their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

[fol. 166]

IN THE SUPREME COURT OF FLORIDA

MANDATE FROM SUPREME COURT OF FLORIDA—
April 1, 1957

180588

To the Honorable, the Judges of the Circuit Court for the Eleventh Judicial Circuit of Florida. Greeting:

Whereas, Lately in the Circuit Court of The Eleventh Judicial Circuit, in and for the County of Dade in a cause wherein

R. S. LEVY, et al, were plaintiffs

and

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A.F. OF L) et al, were defendants

the Decree of said Circuit Court was rendered Dec. 6, 1957 as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

And Whereas, at the January Term of said Supreme Court holden at Tallahassee, A. D. 1957, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 15th day March A. D. 1957 the said Supreme Court rendered its opinion and judgment in said cause as per copy thereof hereto attached and made a part hereof.

In Consideration Whereof, It Is Ordered by the Court that the Appellees do have and recover of and from except the $12.00 filing fee which has been paid the Appellants, the Appellants costs in this behalf expended herein taxed and that all other costs shall be taxed in the court in which the appeal was entered, therefore,

You Are Hereby Commanded, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Decree of the Circuit Court notwithstanding.

Witness, The Honorable Glenn Terrell
Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 1st day of April 1957.

/s/ Gwyte P. McCord
Clerk Supreme Court of Florida.

Filed this 2 day of Apr A. D. 1957
recorded this 4 day of Apr A. D. 1957
in Chancery Order Book 1285 on Page 82

E. B. Leatherman,
Clerk Circuit Court
By (Illegible)

[fol. 168]

In the Supreme Court of Florida

No. 28236

Hotel Employees Union, Local No. 255 (A. F. of L.), et al., Appellants,

v.

R. S. Levy, Daniel Lifter and J. S. Lansburgh, as Trustee, etc., et al., Appellees.

Directions to the Clerk—Filed May 18, 1957

The Clerk of the above styled Court will please prepare and file with the Clerk of the United States Supreme Court, a certified copy of the record in the above captioned cause. Said record shall contain:

1. Transcript of record as certified by the Clerk of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida.

* * * * * * *

3. Petition for Certiorari.

4. Opinion of the Court on Certiorari.

5. Judgment and/or Order of the Court on Certiorari.

6. Mandate to the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida on Certiorari.

7. Opinion of the Court on Final Appeal.

8. Judgment and/or Order of the Court on Final Appeal.

9. Mandate to the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida.

10. These Directions to the Clerk.

Respectfully requested

J. W. Brown and Gramling & Gramling, Attorneys for Appellants, By /s/ Carrington Gramling.

[fol. 169] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. A]

IN THE SUPREME COURT OF FLORIDA

Case No. 28,237

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al, Appellants,

v.

THOMAS JEFFERSON, INC., a Florida corporation, Appellee.

Transcript of Record—Filed April 5, 1956

J. W. Brown and Gramling & Gramling, 226 Shoreland Building, Miami, Florida, Attorneys for Appellants.

Anderson & Nadeau, First National Bank Bldg., Miami, Florida, Attorneys for Appellee.

[fol. 1]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180677

THOMAS JEFFERSON, INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL 255 (AFL), DAVID HERMAN, as director of organization of said Local, CLARENCE L. SMITH, ALBERT H. BERLIN and HENRY K. MISCHEL, individually and as business officers and agents of said local, Defendants.

COMPLAINT FOR INJUNCTION AND OTHER RELIEF—Filed June 17, 1955

1. Plaintiff is a Florida corporation. Hotel Employees Union, Local 255, is a labor union within the meaning of Chapter 477, Florida Statutes. David Herman is the direc-

tor of said union, and Clarence L. Smith, Albert H. Berlin and Henry K. Mischel are business agents and officers in said union.

2. Plaintiff is the owner of a hotel known as the San Marino Hotel, situated at 4299 Collins Avenue, Miami Beach, Florida. Its accommodations consist of 133 rooms, together with cabanas, private beach, card rooms, television rooms, dining rooms, convention hall, and cocktail lounge. The hotel is operated in accordance with the high standards which have been competitively set on Miami Beach, and in order to render the services which are necessary to their maintenance of a first-class resort hotel, plaintiff employs approximately 26 employees. The hotel is operated on a year-round basis, and said employees are paid acceptable wages as large as those paid by similar hotels in the area. The employees are satisfied with the working conditions, hours of labor, and the fringe benefits afforded by the plaintiff to said employees. No employee has ever registered a grievance with the plaintiff concerning hours of [fol. 2] work, rate of pay, or working conditions. Plaintiff has invested in said hotel approximately $1,700,000.00 and pays real estate taxes annually in the sum of approximately $43,000.00.

3. Shortly prior to the events hereinafter set forth, the defendant, David Herman, communicated with Saul Cohen, president of the Miami Beach Hotel Owners Association, and demanded that he induce all of the owners of the ocean-front hotels in Miami Beach to execute labor contracts with the defendant labor organization and thereby recognize that said union represented the employees of all of said hotels. In this fashion the said David Herman proposed to procure memberships in his union of the employees of said hotels, which was the purpose for which said union had been organized. The said Herman threatened the said Cohen by stating to him that unless the hotel owners recognized said union and gave it the desired contract, Herman would, through economic sanctions such as picket lines, cause them great loss and thereby force them to give to the said union contracts covering the employees in said hotels, who were not, in fact, members of

or represented by said union. The said Cohen informed the said Herman that neither he nor the said association had power or authority to represent the owners of the individual hotels in reference to any labor matter involving any particular hotel.

4. In furtherance of his plan, the said Herman proceeded to distribute throughout the City of Miami Beach, and in many cities elsewhere, handbills such as those attached hereto and marked Exhibits 1 and 2 which are true copies of the originals so distributed, and thereafter, in pursuance of the threats made to the said Saul Cohen and in an attempt to punish the owners of said hotels, proceeded to cause picket lines to be placed around various and sundry hotels on Miami Beach with the result that a great deal of unfavorable publicity was created in northern cities concerning the availability of hotel accommodations in Miami Beach. In co-operation with the defendant labor organization, the said David Herman procured the New [fol. 3] York Hotels Trade Council, A. F. L., to distribute circulars widely in New York City.

5. The defendants have widely publicized their activities throughout the United States by newspaper advertisement and otherwise, indicating and directing the public's attention to the fact that the Miami Beach hotels were strikebound and that services normally incident to such hotels are not obtainable and requesting all persons contemplating going to Miami Beach to call a phone number in New York City, CIrcle 57000, which number is the office of the New York Hotel Employees Union. There the officers and agents of the New York Local inform the caller of the names of all the hotels on Miami Beach where an alleged strike is asserted to be in progress, contrary to truth and fact, and advising that such persons not make reservations at such hotels because they will be unable to obtain service, and recommending that they go only to Union hotels.

6. The defendant, David Herman, then caused to be served upon the plaintiff a letter in which it was stated that the defendant union represented "a substantial number" of the plaintiff's employees, and in such letter a

demand was made upon the plaintiff to meet with the said Herman and to settle with him the grievances and complaints specified, through negotiation, and upon agreement being reached, to execute a contract. The letter threatened that unless an affirmative reply was received, it would be understood that the plaintiff did not wish to negotiate the alleged grievances and that the union would take whatever action it deemed necessary to protect the interest of its members.

7. The plaintiff, upon receipt of said letter, took a vote of its employees and, upon a vote being taken, only two plaintiff's employees voted in favor of the union and requested that it negotiate for them.

8. The plaintiff thereupon communicated by letter with the defendants and informed them that if the union would [fol. 4] furnish satisfactory proof that it represented a majority of the plaintiff's employees and had been designated to represent them, that the plaintiff would negotiate the alleged grievances. The plaintiff received no response to this communication. The defendants have never provided the plaintiff with proof that the defendant union represents a majority of the plaintiff's employees, or which employees, if any, the defendant in fact does represent, and plaintiff stands ready, willing and able to negotiate with said union if and when said union can furnish to the plaintiff evidence that it does in fact represent the plaintiff's employees.

9. On June 15, the defendant established a picket line in front of the plaintiff's hotel. This picket line was placed in the furtherance of a plan and conspiracy to bring economic pressure upon the plaintiff to compel it to negotiate with said union, in spite of the fact that said union does not represent a majority of the plaintiff's employees. The pickets carried placards reading substantially as follows:

> "This hotel refuses to negotiate. Hotel Employees Local 255, American Federation of Labor."

The pickets also carried signs announcing that the hotel was not a union hotel and requesting the general public

not to patronize the same. Said placards also announced that said hotel was on strike. The placards carried by said pickets are false, malicious and untrue.

10. The presence of said picket line has caused and will continue to cause the plaintiff severe economic loss, the extent of which is incalculable. In addition to the loss of patronage by individuals and families, the plaintiff has booked for the summer season four conventions which, if the conventions move to other hotels as a consequence of this alleged strike, it will suffer a severe economic loss.

11. The defendants have engaged in vandalism and violence at other hotels. All the hotels in the City of Miami Beach are in close proximity to each other, and the actions [fol. 5] of the defendants are designed and calculated to disseminate false information as to the services available at the plaintiff's hotel, to publicize the presence of the picket line, to falsely indicate to the general public that a strike is in process when in fact no such strike exists, and to induce a boycott of the plaintiff's hotel. The actions of the defendants are contrary to the express wishes of the majority of the plaintiff's employees, and the conduct of such union not only affects the economic condition of the plaintiff, but impairs the opportunity of the employees to earn a livelihood.

12. The hotels around which said picket lines have been established from time to time, as such lines were established, sought injunction relief from the Circuit Court of Dade County and said injunctions have, in the main, been granted. As injunctions have been granted in each case, the defendants have complied therewith, but have moved to other locations with the idea of extending the pattern of such behavior, as outlined in the threat to the said Saul Cohen, and in an effort to cause conformance to their demands on the part of other hotel owners whose premises have not been subject to picket lines.

13. In an effort to carry out their dual plan of intimidation of employees and the enforcing of the economic sanctions against the employers, the defendants have caused to be circulated to large numbers of people and as many hotel

employees as they could reach, handbills such as that attached hereto marked Exhibit 3, notwithstanding which the majority of the employees of the various hotels which have been struck by the defendants have not become members of said union, and the statements in said handbill, Exhibit 3, are false and untrue and known to be so by the persons circulating them.

14. The defendant union, by its actions, has imposed economic sanctions upon the plaintiff and operators of other hotels in order to achieve an illegal purpose. The conduct and actions of the defendants are an overall design directed towards all hotels within the City of Miami Beach, [fol. 6] Florida, to bring about a recognition of the defendant union by all the hotels as the collective bargaining agent for all hotel employees, notwithstanding the fact that, as hereinabove alleged, the defendant union does not represent such employees or that such employees have not designated the defendant union as a bargaining agent.

15. The defendants, individually and collectively, are engaged in actions which are in violation of the laws of the State of Florida and the Constitution of the State of Florida in that the said defendants are attempting by their actions hereinabove alleged to:

(a) be designated the collective bargaining agent for employees they do not represent;

(b) deny the employees of the San Marino Hotel the right to work because they are not members of the defendant union;

(c) establish a picket line for an illegal purpose;

(d) falsely publicize a non-existent labor dispute.

16. The actions of the defendants are designed and intended to inflict such an economic injury to the economy of the City of Miami Beach as to compel the various hotel owners to capitulate to the defendants' demands in the public interest, as well as in their own; and if the defendants are permitted to maintain picket lines in front of the several ocean-front hotels in Miami Beach, the result will be that a

severe blow will be dealt to the economy of that city because holiday vacationers will not submit to the annoyance and harassment that inevitably accompany the maintenance of picket lines around places where such vacationers are staying.

The Premises Considered, the plaintiff prays that the court will temporarily enjoin and restrain the defendants from maintaining a picket line or from picketing the property of the plaintiff and from doing any other or further [fol. 7] acts in pursuance of the plan set forth in the complaint which are reasonably calculated to prevent the public from patronizing the plaintiff's hotel, and that on final hearing said injunction be made permanent.

Thomas Jefferson, Inc., by Robert S. Robinson, As Its Secretary.

Anderson & Nadeau, by Herbert L. Nadeau, Attorneys for Plaintiff, 908 First National Bank Bldg., Miami 32, Florida.

Duly sworn to by Robert S. Robinson, jurat omitted in printing.

[fol. 8]

EXHIBIT 1 TO COMPLAINT

WHY THE PICKETING AT MIAMI BEACH HOTELS?

ON FEBRUARY 25th, Hotel Employees Union, Local 255, American Federation of Labor, announced a peaceful campaign to unionize hotel employees of Miami Beach.

ON MARCH 3rd, a union representative met with SAM RIVKIND, who was then Executive President of the Miami Beach Hotel Association, and suggested a conference with the Association to discuss the problem. The suggestion was REJECTED.

ON MARCH 23rd, representatives of the Union met with SAUL COHEN, President of the Hotel Association, and

suggested a conference between the Union and Association. The suggestion was REJECTED.

ON MARCH 30th, the Union sent letters to LEON C. McASKILL, Executive Director of the Association, and to EVERY MEMBER of the Association Board of Directors, requesting a conference. All of those letters WERE IGNORED!!

SINCE THE HOTEL ASSOCIATION CLOSED ITS EYES TO ITS EMPLOYEES' SIGNALS OF DISTRESS, THE ONLY COURSE LEFT WAS TO OPEN THEM "THE HARD WAY." THE EMPLOYEES ARE PICKETING TO CALL ATTENTION TO THEIR REQUEST FOR A CONFERENCE WITH THEIR EMPLOYERS

The right to organize and bargain collectively is a fundamental Law of the United States.

Only behind the "Iron Curtain" are workers denied that right.

Miami Beach hotel employees are acting in defense of their guaranteed American rights.

WE THANK YOU FOR YOUR SUPPORT AND WISH TO REMIND YOU THAT YOUR FINANCIAL CONTRIBUTIONS SHOULD BE MADE PAYABLE TO:

HOTEL EMPLOYEES UNION, LOCAL 255
AMERICAN FEDERATION OF LABOR
1575 Washington Ave., Miami Beach Phone: JE 8-0539

[fol. 9]

EXHIBIT 2 TO COMPLAINT

THE SITDOWN STRIKE

of

THE MIAMI BEACH HOTEL OWNERS

——Hundreds of hotel workers are walking picket lines.

——Conventions are being transferred and cancelled.

——Package tours are being cancelled and/or diverted to other areas.

——The entire community is growing anxious as June, July and August approach.

YET, MOST OPERATORS OF MIAMI BEACH HOTELS ARE SITTING AS THE MIGHTY SPHINX, SILENT AND IMMOVABLE.

They ignore the will of their workers.

They ignore the law of the land.

They ignore Miami Mayor Abe Aronovitz.

They ignore the plea of the Council of Presidents.

WILL THEY EVEN IGNORE THE GOVERNOR OF FLORIDA:

The Nero of history fiddled while Rome burned. The hotel owners are on sitdown strike while the community suffers.

The way for the community to get back to normal is to demand that the hotel owners call off their sitdown strike and start negotiating with the union.

It Is Not Too Late To Save July and August!

HOTEL EMPLOYEES UNION, LOCAL 255
American Federation of Labor
1575 Washington Ave. Miami Beach Phone: JE 8-0539

[fol. 10]

EXHIBIT 3 TO COMPLAINT

TO PATRONS OF MIAMI BEACH HOTELS:

SORRY TO INCONVENIENCE YOU!

——You Pay TOP Rates For The 'BEST' In HOTEL SERVICE- -

And Yet

——Wages of Many of Employees who provide this 'BEST' Service are THE LOWEST in the United States!

——Whenever You See A Miami Beach Hotel Being Picketed, You Will Know That The OVERWHELMING MAJORITY of Employees Of That Hotel Refuse To Work Until Management Agrees To Recognize Their Employees Union And To Bargain Collectively In The AMERICAN WAY!

HOTEL EMPLOYEES UNION, LOCAL 255
American Federation of Labor
1575 Washington Ave. Miami Beach Telephone JE 8-0539

[fol. 11]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

ANSWER—Filed July 6, 1955

Come Now Defendants and make this their Answer to the Complaint and answering say:

1. That they admit the identity of the parties as set forth in Paragraph 1 in the Complaint.

2. The Defendants denies that the employees of Plaintiff are satisfied with working conditions, hours or labor, and the fringe benefits afforded by the Plaintiffs to its employees, and in answer thereto do adopt the averments of the Affidavit of Dave Herman, attached hereto and made a part hereof, as though herein at this point set forth in haec verba.

3. Defendants admit that Dave Herman communicated with Saul Cohen, President of the Miami Beach Hotels Association and deny the remaining allegations of Paragraph 3 and herein at this point reaver the matters and things set forth in the Affidavit of Dave Herman, which is attached hereto.

4. Defendants deny the material allegations of Paragraph 4 and aver that the distribution of hand bills, if any, and any other actions taken by the Defendant Union at all times involved in this instant litigation is for the sole purpose of inducing the Plaintiffs to accord to its employees their constitutional and statutory rights of receiving recognition by and through a representative of their own choosing.

5. Defendants deny any allegation of Paragraph 5 that may be determined to be material to the issues of this cause.

6. In answer to Paragraph 6 Defendants reaver the contents of the Affidavit of Mr. Dave Herman as though herein at this point set forth in haec verba. And in addition, thereto, your Defents (sic) would further state that they did request Mr. Paul J. Weiss, Certified Public Accountant [fol. 12] of the State of Florida, to examine the books and records of Defendant Union to ascertain to his own satisfaction the number of employees of the Plaintiffs, who have designated Defendant Union as their bargaining agent, and who are members of Defendant Union. That said Paul J. Weiss, Certified Public Accountant, did on the 7th day of June 1955, determine such facts and did certify that forth-seven (sic) employees of Plaintiffs were members of Local No. 255 and have designated Local No. 255 as their collective bargaining agent. Such certification was duly sworn to and certified before a Notary Public of the State of Florida.

Defendants further aver that an executed and notarized copy of such certification was delivered to the Plaintiffs on the 7th day of June 1955, together with a letter duly signed by David Herman, as Director of Organization of Defendant Union, advising Plaintiffs that defendant Union represents a substantial member of Plaintiffs' employees as

shown by the above referred to certification. Said letter further advised Plaintiffs that such employees represented by Defendant Union have certain grievances and complaints. Said letter further had attached to it a list of "requests to settle grievances and complaints". Said letter further requested Plaintiffs to meet with a representative of the employees of Plaintiffs who had designated Local No. 255 as their bargaining agent to settle such grievances and complaints. Plaintiffs were further advised by such letter that in the event they desired, such grievances and complaints would be submitted to a mutually satisfactory arbitrator or to an arbitrator designated and selected by the American Arbitration Association with both parties to abide by the rules of such arbitrator.

Plaintiffs were advised that under no circumstances did Defendant Union desire or would Defendant accept any type of contract or agreement which would either expressly or by implication force Plaintiffs' employees to designate Defendant Union or any organization or any individual as the bargaining agent of its employees or which would in any way compel Plaintiffs' employees to become members of Defendant Union or any other organization.

[fol. 13] Plaintiffs were further advised that unless Plaintiffs agreed by some affirmative response by June 12, 1955, it would be understood that Plaintiffs did not wish to meet to negotiate or adjust the differences between the parties.

Plaintiffs were further advised that in the event of negative response or no response that Defendant Union would then feel free to take whatever action that would protect the interest of its members, including publicizing the facts and picketing. A true and exact copy of such letter dated June 7, 1955, together with certification of Paul J. Weiss, Certified Public Accountant and list of requests to settle grievances and complaint, are attached hereto and made a part hereof as fully as if set forth in their entirety herein.

Defendants further state that they did receive a certain letter dated June 10, 1955, on behalf of San Marino Hotel setting forth that "Upon receipt of the names of the employees you claim to represent, together with trustworthy

proof that said employees have designated your Union to represent them, we shall communicate with you regarding this matter".

Defendants further state that such reply was not made in good faith in that the certification referred to above by a certified public accountant of the State of Florida has been previously sent and that a list of the names of the employees who are members of Defendant Union, was an unreasonable, arbitrary and capricious demand made solely for the purpose of assisting the Plaintiffs in retaliatory discrimination against the said Union member-employees.

Defendants further state that such certification by a certified Public Accountant of the State of Florida is certainly trustworthy proof concerning the designation by its employees; and no other method has ever been suggested by Plaintiffs.

Defendants further state that said letter of June 10, 1955, was not an affirmative response to the said letter of Defendant Union dated June 7, 1955, in that Plaintiffs while demanding additional proof regarding the designation by their employees, did not agree or affirmatively state [fol. 14] that they would negotiate provided such new demands were met. On the contrary, Plaintiffs stated merely that if such demands were met they would "communicate" with Defendant Union. It is obvious, therefore, that Plaintiffs are continuing to "stall" and have adopted the hypocritical attitude that they doubt the Union representation, notwithstanding the direct representations made to Plaintiffs and the common knowledge of the entire community, of which this Court may now take judicial knowledge. Defendants deny each and every material allegation of Paragraph 6 not specifically admitted herein, as though each such allegation was herein set forth and separately and categorically denied, and specifically adopt the Affidavit of Dave Herman as though at this point repeated.

7. Defendants deny that any vote such as could be recognized by a court of equity and good conscience was taken by the employer of its employees, but would aver that the said employees were coerced and intimidated by Plaintiffs employer in the exercising of their right to be represented

by a bargaining representative of their own choosing, without having "to apologize or explain to the boss".

8. Defendants admit the letter by the Plaintiff, but deny all further allegations of Paragraph 8 and aver these Defendants are without knowledge as to any law requiring the Defendant Union to present a list of its members to an employer and thus subject them to retaliation, discrimination and black-listing; and Defendants have at all times stood ready, willing and able to demonstrate its representation of Plaintiffs employees by any fair means such as secret election, or certification by a disinterested Certified Public Accountant of the State of Florida, or by any other fair means which has not as yet been proposed by the Plaintiffs or by any other of the hotels of Miami Beach, who are resorting to the courts for injunctions to defeat the legitimate demands for collective bargaining of the hotel employees of Miami Beach, as is referred to in Paragraph 12 of Plaintiffs' Complaint.

[fol. 15] 9. Defendants admit to picketing of Plaintiffs' hotel and deny each and every of the remaining allegations of Paragraph 9.

10. Defendants are without knowledge of the economic loss of Plaintiffs, therefore deny same and demand strict proof.

11. Defendants deny each and every of material allegations of Paragraph 11 and specifically deny that there has been any vandalism or violence in connection with the picketing of the hotels on Miami Beach, and deny each and every of the remaining material allegations of Paragraph 11.

12. Defendants deny each and every of the material allegations of Paragraphs 12, 13, 14 and 15 of the Complaint, as fully and completely as though each such allegation were herein at this point repeated and each severally, separately and categorically denied.

13. And these Defendants aver that Plaintiff, in unison with many of the other hotels of the city of Miami Beach, Florida, has set upon a calculated course to deprive the

employees in the hotel industry of Miami Beach of their constitutional and statutory guarantees of freedom of speech, the right to bargain collectively with their employer through representation of their own choosing and to hold in peonage the working people in the hotel industry and that Plaintiff has entered into a conspiracy with the other hotels of Miami Beach, which are members of the Miami Beach Hotel Association, to deprive the employees of the hotel industry of their rights as aforesaid and as overt acts of said conspiracy, your Defendants would show that these Plaintiffs in concert with the other members of the Hotel Owners' Association are blacklisting union members through the hotel industry and in the San Marino Hotel, coercing and intimidating other hotel employers to refuse to deal with Defendant Union, notwithstanding the representation by this Defendant Union of such employers' employees, by imtimidating, (sic) coercing and threatening other employers with reprisals in the event that such other employers recognize, negotiate or enter into [fol. 16] any contract with defendant union, notwithstanding the representation by this Defendant Union of such employers' employees.

14. And your Defendants would show that the Plaintiffs seek to maintain this litigation in a court of equity and good conscience with unclean hands, for that the Plaintiffs have denied to its many employees the statutory and constitutional guarantees of representation and collective bargaining as afore set forth and are endeavoring to frustrate and to bring to naught the provisions of the aforesaid statutory constitutional clauses and enactments, contrary to equity and good conscience.

That your Defendant Union as the spokesman and representative of its members who are employed by Plaintiffs, has long sought to bring about negotiations and the Plaintiffs have failed and refused to respond to the invitations and solicitations of this Defendant Union, acting on behalf of its members and that the picketing became necessary in order to appeal to the friends and sympathizers of the members of Defendant Union who are employed by Plaintiffs, as aforesaid; that in the utmost of good faith, your Defendant Union has invited Plaintiffs to hold an ellection

(sic) by secret ballot under any fair and empartial (sic) authority and by such secret ballor, (sic) demonstrate to Plaintiffs the bonafides of Defendant Union's assertion concerning representation.

That Plaintiffs seek to deprive these Defendants and the members of Defendant Union of the constitutional guarantee of freedom of speech, as provided for in Article 1 and 14, Bill of Rights, Constitution of the United States of America and the similar provisions of the Declaration of Rights of the Constitution of the State of Florida, and the guarantee of Chapters 447.03 and 447.13 Laws of the State of Florida.

And Defendants would respectfully show unto this Honorable Court that the allegations of the Complaint and the [fol. 17] prayer for relief in said Complaint predicated upon the allegations therein seek only to deprive your Defendants of their constitutional guarantees of freedom of speech and to impose upon the individual members of the Defendant Union an involuntary servitude contrary to the provisions of the 1st, 13th and 14th Amendments of the Constitution of the United States of America. Granting the prayer of Plaintiffs' petition would result in abridging and depriving of these Defendants and each and every member of Defendant Union and each and every person enjoined of his or her Constitutional right to speak freely his opinions and to communicate facts and to refrain from working individually or in concert with others, contrary to the aforesaid Constitutional provisions. Defendants further state that in the event the provisions of any Statute of the State of Florida are applied to the facts of this instant cause so as to grant the relief prayed for by the Plaintiffs, the same would result in denying to these Plaintiffs, all members of the Defendant Union, and all other persons enjoined the guarantees of the Constitution of the United States and of the Constitution of the State of Florida, as aforesaid.

Wherefore, your Defendant Union prays this Honorable Court that should this Honorable Court desire to ascertain the fact of the representation by Defendant Union through the process of the Court, that a Commissioner be appointed to hold an election among the Plaintiffs' employees, to ascertain and report to this Honorable Court the truth

and accuracy of the statements in Plaintiffs' petition as to the representation by Defendant Union of employees of Plaintiffs and that this Honorable Court enter its Declaratory Decree, declaring this Union to be in fact the duly authorized representative of the majority of Plaintiffs' employees within the jurisdiction of Defendant Union, and that upon judicial ascertainment and Declaratory Decree, that this Honorable Court by its mandatory injunction, require the Plaintiffs to negotiate and bargain in good faith with this Union on behalf of the members of the Union, who are the employees of Plaintiffs, as is con-
[fol. 18] templated by Chapter 447 of the Laws of the State of Florida, together with Section 12 of the Bill of Rights, Constitution of the State of Florida and to deny the relief sought in the original complaint.

Gramling & Gramling, J. W. Brown, Ben Gettler, Solicitors for Defendants. By: Carrington Gramling, 224 Shoreland Building, Miami, Florida.

Duly sworn to by Clarence L. Smith, jurat omitted in printing.

[fol. 19]

AFFIDAVIT OF DAVID HERMAN

State of Florida,
County of Dade, ss.:

Before Me, the undersigned authority, this day personally appeared David Herman, residing at the Eastview Hotel, Miami Beach, Florida of full age, who, after being by me first duly sworn, upon his oath deposes and says:

I am Director of Organization of Hotel Employees' Union, Local 255, and have been in this position since on or about February 15, 1955. During the course of my duties as Director of Organization I have received many complaints from employees of the San Marino Hotel concerning the deplorable wages and working conditions existing at the Hotel. These deplorable conditions included a 7-day

week, 12-hour day, no compensation for overtime, no job security, low wages and many others. On the basis of the many conversations with employees of the San Marino Hotel, I know that there are approximately fifty-five regular, steady employees, excluding management and management-associated employees, working, within the jurisdiction of Local 255. As a result of these conditions, forty-seven of the approximately fifty-five employees of the San Marino Hotel authorized Hotel Employees' Local No. 255 to represent them for the purpose of collective bargaining.

Twenty-eight employees of the San Marino Hotel have signed white cards stating, "I hereby designate Hotel Employees Union, Local No. 255 as my collective bargaining agent. I request the Union to negotiate on my behalf with my employer on all matters dealing with wages, hours and conditions of employment". Said twenty-eight cards are attached hereto and made a part hereof.

Nineteen additional employees of the San Marino Hotel have signed yellow cards, stating as follows:

[fol. 20] "I, ..., an employee of the San Marino Hotel do hereby designate the Miami Hotel Trades Council, consisting of affiliates of the American Federation of Labor with jurisdiction over the respective crafts, unions and industrial unions in the hotels of Miami and Miami Beach, to be my duly authorized collective bargaining agent on all matters pertaining to my wages, hours and conditions of employment." Said nineteen cards are herewith attached and made a part hereof. The Miami Hotel Trades Council referred to therein includes the Defendant Union, Hotel employees Union, Local No. 255, and a designation of said Miami Hotel Trades Council by an individual employee of the hotel working within the jurisdiction of Local No. 255 is a designation of Local 255 by such employee to represent him or her for the purpose of collective bargaining. Each of the persons who signed the said cards submitted herewith are working within the jurisdiction of Local No. 255.

As a Director of Organization for Local No. 255, I am in charge of keeping and have custody of all applications for membership referred to above, as well as all designation

cards referred to above. The cards and applications attached hereto and made a part hereof are part of the official records of Local No. 255.

When I first assumed my duties as Director of Organization, I learned from the records of Local No. 255, and by being advised by various spokesmen for the Miami Beach Hotel Association, that the Miami Beach Hotel Association represented this Plaintiff Hotel among others, for the purpose of labor relations and dealings with any labor organizations. After I assumed my duties as Director of Organization and up to the present date, I have been similarly advised by various hotel owners as to the truth of the aforesaid statement. I was further advised as to the representation of Plaintiff Hotel by the Miami Beach Hotel Association by my attorney, J. Carrington Gramling, who exhibited to me the ruling of the Honorable George E. Holt in Chancery Cause No. 121214 wherein Morris Lans- [fol. 21] burgh and the Miami Beach Hotel Owners Association were Defendants, in which order the various hotels of Miami Beach, who were members of the Association, were enjoined, as members of the Association from blacklisted (sic) and indulging in other unfair labor practices, which order judicially recognized Hotel Owners Association as a proper party for the purpose of enjoining its member hotels in labor matters, after the taking of testimony. The Miami Beach Hotel Owners Association referred to in said Case #121214 is the same and identical association referred to herein as Miami Beach Hotel Association.

Robert S. Robinson, Secretary of Plaintiff Corporation, has at all times pertinent to this suit, been a director of the Miami Beach Hotel Association, and all communications with the directors of the said Association have also been had with the said Robert S. Robinson.

I first contacted Plaintiff by contacting their representative, the executive president of Miami Beach Hotel Association, Mr. Sam Rivkind, who was also the executive president of the Association at the time of the entry of the order by Honorable George E. Holt, against the Association, aforesaid. Such contact was on March 3, 1955 by direct conversation with the said Mr. Rivkind. I dis-

cussed with Mr. Rivkind the desires of the employees of the various member hotels of the Association to be represented in all labor-employer relation matters by Local 255, and the desires of said employees to improve their wages, hours and working conditions. Mr. Rivkind advised me that he would discuss with the Board of Directors of the Hotel Association and the owners of the various hotels involved, including Plaintiff herein, the advisability of a conference for the purpose of working out an orderly procedure whereby defendant Union would be able to establish its right to bargain collectively on behalf of its members employed in the various hotels, including Plaintiff Hotel, [fol. 22] based upon a secret ballot Mr. Rivkind stated that he would endeavor to bring about a meeting between myself and such other representatives of the Union as would be designated, and a representative committee from the Hotel Association.

I next met with Mr. Rivkind on or about the 6th or 7th day of March, 1955. He advised me that he had revealed our previous conversation to a number of the members of the Miami Beach Hotel Association, including Plaintiffs; that he, however, was withdrawing from the executive presidency of the Association and that I should therefor continue any discussion with the President of the Association, Mr. Saul Cohen.

I met with Mr. Saul Cohen on March 20, 1955. We discussed the problem of the recognition by the Association of its members of Local 255 as the representative of Hotel Employees Union who had designated Local 255 as their collective bargaining agent. We further discussed the possibility of improving the working conditions and standards of said employees represented by Local No. 255, increasing their wages, reducing their hours, and other matters of that specific nature. There was no decision made at that conference.

I again met with Mr. Saul Cohen on March 23, 1955. We discussed the same general problems that were discussed in the meeting of March 20, 1955. I pointed out to Mr. Cohen the low wages, long hours and other unfavorable working conditions which existed in the various hotels, including Plaintiff Hotel, and advised him that it was our

purpose to endeavor to improve those conditions for the persons who were represented by Local 255. It was generally agreed between us that the standards in said hotels, including Plaintiff Hotel, were very low. We discussed the example of representation of employees in New York City, whereby over a period of seventeen years through a process of orderly collective bargaining, conditions had been in- [fol. 23] creased multifold since 1937. I pointed out to Mr. Cohen that in New York City, although the hotel industry from the point of view of numbers of employees and number of rooms is equivalent to Miami Beach, that there has not been a serious strike, work stoppage or cessation of work in all of the time that the Union has been organized and that on the contrary, the hotel industry there was prospering simultaneously with the improvement of the conditions of the hotel employees. I also pointed out to Mr. Cohen that in every hotel where we claimed a majority, we would be willing and happy to go through an election to determine and establish that fact. I also advised him that in the event of disputes between Local 255 and the hotels, including Plaintiff Hotel, we would be willing in each case to submit such dispute to an impartial arbitrator to be mutually agreed upon by both parties.

Mr. Cohen replied:

"You know I can't disagree with anything you say and I wish we had hotel owners in Miami Beach. We have got pants pressers, dressmakers, everything except hotel owners, and if I come to them with any kind of proposition like that, they will think I am crazy. They will think I am working for the Union instead of being the President of the Hotel Association."

Mr. Cohen requested that I write a letter to the Secretary of the Association asking for a meeting. In accordance with the aforesaid suggestion, I wrote such a letter on behalf of Local 255; and I further advised Mr. Cohen, during the course of that conversation, that Local 255 represented a substantial number of employees of the hotels, including Plaintiff Hotel; in fact, I claimed that we represented a majority, which in fact we do. My statements in regard to representation were not questioned in any way. On the contrary, such representations were accepted by him.

I did not receive a reply to the letter sent to the Association referred to above; therefore, on April 10, 1955, I had published, by paid advertising in each of the three major Miami newspapers, a copy of said letter. However, I have never received to this very day, any reply whatsoever to the said letter or to the said ad.

[fol. 24] A copy of said letter was sent to these Plaintiffs on March 30, 1955.

On or about April 1, 1955, I sent a telegram to Plaintiff Hotel stating that Local 255 represents a substantial number of employees of the San Marino Hotel and requested a conference for the purpose of entering negotiations with respect to wages, hours and other conditions of employment. In respect to this telegram, I received a letter April 20th, which was erroneously dated May 20th over the signature of Samuel Levy who is an officer of the corporation. The letter set forth an acknowledgment of our telegram and a suggestion for a conference on or about the third of May, at which time Mr. Robert Robinson, another officer of the corporation, was due back to Miami Beach. I telephoned the San Marino on or about Saturday, May 7, 1955, and suggested that we enter into negotiations as was indicated in their letter. As a result of that conversation, I had a meeting with Mr. William Goldring, Manager of the San Marino Restaurant, and we discussed the methods for conducting negotiations. Mr. Goldring advised me that his associates in the San Marino especially Mr. Robert Robinson would have no objection to negotiating a set agreement with the Union, but that they were afraid of the reprisals that would be exercised against them by the larger hotel members of the Miami Beach Hotel Association, whose attitude towards the Union was that of antagonism and belligerence.

During the course of my conversation with Mr. Goldring, we agreed to postpone our conversations for about a week or two pending the outcome of some of the cases that were being argued in the various courts involving other Miami Beach hotels in this Union.

On June 7, 1955, I did request Paul J. Weiss, Certified Public Accountant, of the State of Florida, to examine the books and records of the Union and to ascertain to his own

satisfaction the number of employees of the Plaintiffs who have designated Defendant Union as their bargaining agent, and who are members of Defendant Union. That said P. J. Weiss did thereupon determine such facts and did certify that forty-seven employees of Plaintiffs were mem- [fol. 25] bers of Local 255, and had designated Local 255, as their collective bargaining agent. A duly sworn certified certificate to this effect was forthwith delivered to Plaintiffs together with letter which is attached hereto and made a part hereof, and is described in the Answer filed by the Defendants in this cause, and that I thereupon received a reply from Plaintiffs dated June 10, 1955, demanding the names of the employees claimed to be represented by Local 255 together with trustworthy proof that said employees had in fact designated Local 255, and the statement that upon such submission "we shall communicate with you regarding this matter."

On Saturday, June 11, 1955, I received a call from Mr. Goldring speaking on behalf of the San Marino Hotel, in which conversation he told me to disregard the letter of June 10, 1955, and stated that the San Marino Hotel was ready and willing to sign an agreement recognizing Hotel Employees' Union Local 255 as a collective bargaining agency for all of the employees in the jurisdiction of the Hotel Employees' Union Local 255, and to enter into collective bargaining on matters of wages, hours and other conditions of employment.

In view of the fact that I was leaving town that very afternoon, I delegated Ben Gettler one of the attorneys for the Union, who is of counsel for the International Union and co-counsel with Carrington Gramling, Esq. local counsel, to conduct the negotiations with the San Marino Hotel pending my return to Miami Beach.

I did return to Miami Beach on June 15, at which time I received a report from Mr. Ben Gettler regarding the negotiations with the San Marino Hotel. The report was to the effect that the San Marino Hotel was unwilling to enter into negotiations with Local 255. I thereupon telephoned Mr. Burnett Roth, who at that time was acting as attorney for the San Marino Hotel, and in that capacity conducted negotiations with Mr. Ben Gettler; and Mr. Bur-

nett Roth confirmed to me the information conveyed by Mr. Ben Gettler to the effect that the San Marino was unwilling to enter into negotiations with Hotel Employees' [fol. 26] Union Local 255. I thereupon directed that the picketing commence in front of the San Marino Hotel setting forth that this hotel refuses to negotiate with Local 255.

Since then, I have visited the picket line on numerous occasions. The picketing has been orderly and peaceful. At all times prior to the picketing and at all times subsequent thereto, the Defendant Union has been ready, willing and able to negotiate on behalf of its members, who are employees of the Plaintiff Corporation and that at all times Plaintiff Corporation has refused to negotiate, has refused to accept the certification of Paul J. Weiss, CPA of the State of Florida, and has refused to conduct a fair and impartial secret ballot to determine the wishes of its employees, and has otherwise at all times ignored its employees, acting through their duly designated bargaining agency and have chosen instead to seek an injunction in keeping with the technics of all the other hotels on Miami Beach, referred to in Plaintiffs' Complaint.

On the 25th day of May, 1955, a secret ballot election was held among all employees of the Plaintiff Hotel working within the jurisdiction of Local 255, for the purpose of determining their desires as to representation and as to striking; said election was held under the supervision of an impartial person, not a member of the Defendant Union, namely Samuel J. Geison, who is a radio broadcaster over Radio WAHR and who is a columnist for the Miami Beach publication, "Panorama". Thirty employees of the San Marino Hotel working within the jurisdiction of Local 255, participated in that election and twenty-seven of said thirty employees voted in favor of representation by Local 255, and in favor of a strike. This is a substantial majority of the employees of the San Marino Hotel working within the jurisdiction of Local 255 and who would be affected by any strike, walkout or cessation of work at Plaintiff Hotel.

The Plaintiffs, in the operation of said hotel, are engaged in a business which affects interstate commerce in that thousands of persons are attracted to the state of

[fol. 27] Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida, and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state bus lines, inter-state and international steamship companies, and by passenger automobiles. Said business further is part of "package deal" arrangements with said various inter-state and International airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Trans-World Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular & Occidental Steamship Company, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coastline Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus lines companies including Greyhound Bus Lines Company, Trailways Bus System and various other inter-state bus line companies. Said "package deal" arrangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by Plaintiffs and said inter-state carriers. All expense incurred in promoting, making and consummating said inter-state and international sales are jointly shared by Plaintiffs, and said inter-state and international carriers. The proceeds of said inter-state and international sales are divided between Plaintiffs, as operator of said hotel and said inter-state and international carriers.

[fol. 28] Said Plaintiffs, as a part of the operation of said hotel, purchase numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said Plaintiffs, as a part of the operation of said hotel, sell directly outside of the State of Florida and within the State of Florida for carriage or re-sale, outside of the State of Florida. Said Plaintiffs as part of the operation of said hotel, advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the states of the United States outside the State of Florida and in various countries outside of the United States.

Further Affiant Sayeth Not.

David Herman

Sworn to and subscribed before me, this 6th day of July, 1955.

Sylvia R. Lathero, Notary Public, State of Florida at Large, My commission expires: August 20, 1955.

(N. P. Seal)

[fol. 29] ATTACHMENT TO ANSWER

March 30, 1955

Mr. Leon C. McAskill, Executive Director,
Miami Beach Hotel Association,
1 Lincoln Road,
Miami Beach, Florida

Dear Mr. McAskill:

This Union represents a substantial number of hotel employees who are employed in Miami Beach hotels by members of your association.

It is the announced purpose of the Union to raise the general standards and improve the working conditions of the hotel employees; to provide welfare benefits and eliminate abuses where they exist.

There are several methods that labor and industry can employ in resolving the problems that develop in the course of operating the largest single industry in the community. We, on our part, prefer the method of peaceful negotiation.

For that reason we request that you communicate with the appropriate committee of the Hotel Association of Miami Beach and advise us of the time and place that a conference can be held between a committee of the Association and a committee of the Union.

We respectfully suggest that such a conference be held at the earliest opportunity and arrangements for the conference be made during the course of the next ten days.

Very truly yours,

David Herman, Director of Organization, Hotel Employees Union Local 255, American Federation of Labor.

cc: Board of Directors
Miami Beach Hotel Association

[fol. 30] ATTACHMENT TO ANSWER

May 20th, 1955

Mr. David Herman, Organizer
Local 255
1575 Washington Avenue
Miami Beach, Florida

Dear Mr. Herman:

Confirming our telephone conversation of this morning between Mr. Goldring and you, we are advising you that we are willing to meet with you.

We have advised you that Mr. Robert S. Robinson, our Managing Director, is out of town on business and will return to Miami Beach on either May 2nd or 3rd. It would be unfair to him not to have him present for such a meeting.

Very truly yours,

Samuel Levy, Associate Director

[fol. 31] ATTACHMENT TO ANSWER

CERTIFICATION

PAUL J. WEISS, being first duly sworn, deposes and states as follows:

The undersigned Paul J. Weiss residing at 3720 Poinciana Avenue, Miami, Florida is a duly registered voter in Dade County, Florida and has resided in Dade County, Florida since 1923. Paul J. Weiss is a certified Public Accountant, duly licensed by the State of Florida and has practiced the profession of accounting for more than 30 years.

The undersigned has at the request of Miami Hotel Employees Union, Local #255, examined the records of Local #255, to determine its claim that certain employees of your Hotel, are members of Local #255 and have designated Local #255, as their collective bargaining agent. The examination of those records reveals that 47 of your employees are members of Local #255 and have duly designated Local #255 as their collective bargaining agent.

/s/ Paul J. Weiss

Sworn to and subscribed before me this 7th day of June 1955.

/s/ J. M. Schutter
Notary Public

My Commission Expires:
Notary Public, State of Florida at large. My Commission expires Oct. 9, 1957. Bonded by American Surety Co. of N. Y.

[fol. 32] ATTACHMENT TO ANSWER

June 10th, 1955

Mr. David Herman
Director of Organization
Hotel Employees Union Local 255
1575 Washington Ave.
Miami Beach, Fla.

Upon receipt of the names of the employees you claim to represent, together with trustworthy proof that such employees have designated your union to represent them, we shall communicate with you regarding this matter.

Very truly yours,

The San Marino Hotel

Samuel Levy
Associate Director

SL:se

[fol. 33]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

In Chancery No. 180677E

THOMAS JEFFERSON, INC. SAN MARINO HOTEL, a Florida corporation, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al, Defendants.

SUPPLEMENTAL ANSWER—Filed July 6, 1955

Come Now the defendants and make this their Supplemental Answer and would respectfully show unto this Honorable Court that this Court is without jurisdiction to act in the cause for the reason that the plaintiffs in operation of said hotel are engaged in a business which affects

inter-state commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state buslines, inter-state and international steamship companies and by passenger automobiles.

Said business further is part of "package deal" arrangements with said various inter-state and international airlines, including Pan American Airways, American Airlines, [fol. 34] Delta Airlines, Eastern Airlines, Trans-World Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular & Occidental Steamship Company, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coast Line Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus line companies including Greyhound Bus Line Company, Trailways Bus System and various other inter-state bus line companies. Said "package deal" arrangements are arrangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by plaintiffs and said inter-state carriers. All expenses incurred in promoting, making and consummating said inter-state and international sales are jointly shared by plaintiffs and said inter-state and international carriers. The proceeds of said inter-state and international sales

are divided between plaintiffs as operator of said hotel and said inter-state and international carriers.

Said plaintiffs, as a part of the operation of said hotel, purchase numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said plaintiffs as a part of the operation of said hotel sell directly outside of the State of Florida and within the State of Florida for carriage or resale outside of the State of Florida.

Said plaintiffs as part of the operation of said hotel advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution [fol. 35] of pamphlets and literature and various other means in numerous of the states of the United States outside of the State of Florida and in various countries outside of the United States.

Plaintiffs as part of the operation of said hotel have on said premises various shops and services engaged in inter-state commerce including Western Union Telegraph services, numerous travel agencies, transportation offices for airlines, steamship lines, railroad companies and bus lines, inter-state stock exchange branches, inter-state chain drug stores, inter-state clothing stores and other inter-state retail stores.

Defendants further state that said hotel is part of a multi-state chain, said entire chain being engaged in inter-state commerce, so that labor disputes at plaintiffs' hotel affects inter-state commerce.

Defendants further state that the Congress of the United States has by legislative enactment under the Constitution of the United States, occupied the fields as to all matters complained of in the petition of plaintiffs and this State Court has no jurisdiction to act in the premises wherefore the said cause should be dismissed for lack of jurisdiction.

Gramling & Gramling, J. W. Brown, Ben Gettler, By Carrington Gramling, 224 Shoreland Building, Miami, Florida, Solicitors for Defendants.

Certificate of service (omitted in printing).

[fol. 36]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

ORDER OF THE COURT—July 11, 1955

This Cause came on to be heard July 7, 1955, upon the issues framed by the Bill of Complaint, the Answer and Supplemental Answer, and the Court heard all testimony offered by the respective parties and extensive argument pro et con, and the Court being otherwise fully advised in the premises, makes and enters the following findings and orders:

1. The allegations of the Supplemental Answer alleging interstate commerce and averring that this Court does not have jurisdiction were not supported by evidence. This Court has jurisdiction of the parties and the subject matter.

2. This court further finds from the sworn pleadings and the testimony of the witnesses for the respective parties that both parties have expressed a willingness to negotiate concerning the matters usually and normally attendant upon labor-management relations, and that the sole difficulty appears to lie in the fact that the plaintiff is not convinced that the defendant Union does in fact represent its employees. The defendant has produced its records showing it has been designated as bargaining agent for 47 employees at the San Marino Hotel, while the plaintiff, on the other hand, has submitted a list of names which it represents as being the employees of the hotel, and alleges that only 3 of its recognized employees have designated the defendant Union as their bargaining agent. Although this cause came on for final hearing by consent of the parties, there was not enough evidence produced by either side to determine this easily ascertainable fact.

[fol. 37] This Court has the authority to appoint a Commissioner to determine this fact by examining the plaintiff's payroll records and inquiring by proper means into the status of said employees as to union membership, and the free choice of such Union members as to their representation by defendant union. It is therefore

Ordered, Adjudged and Decreed as follows:

1. Picketing at the San Marino Hotel shall be and the same is hereby enjoined until further Order of this Court.

2. The plaintiff shall forthwith make full and complete showing to the Commissioner hereinafter named in this Order, of all payroll records revealing a true and correct list of all of its employees, as of June 15, 1955, the date said picketing commenced; who come within the jurisdiction of Hotel Employees Union Local No. 255; in accordance with the Stipulation entered into in open court on July 7, 1955, by counsel for the respective parties.

3. The Commissioner hereinafter named shall, for the sole purpose of ascertaining the foregoing facts for the benefit of this Court, within 30 days from the date of this Order, cause an election by secret ballot to be held of the employees of plaintiff as of June 15, 1955, who come within the jurisdiction of the defendant Union, to determine the free choice of said employees as to their representation by defendant Union in the matter of labor-management relations; said secret ballot to be conducted at such place and time and in such manner and form as to the said Commissioner may seem appropriate and reasonable, the expense thereof to be taxed as part of the costs in this case.

4. The parties hereto are each respectively enjoined from in any wise coercing or intimidating the aforesaid employees of the plaintiff, by threats of any kind or by any act or [fol. 38] means deterring or interfering with the free choice of the said employees to vote either for or against the designation of the defendant Union as the bargaining agent for the employees of said hotel.

5. The Court finds there is no strike at the San Marino Hotel, and the parties are hereby restrained and enjoined from falsely publicizing the alleged existence of a strike at plaintiff's hotel in publications that are published either in this jurisdiction or elsewhere.

6. The Honorable Joe Eaton, a former Judge of this Court, is hereby appointed as Commissioner of this Court for the purpose of ascertaining the names of those em-

ployees of the Plaintiff as of June 15, 1955, who are within the classification of employees over which the defendant Union assumes to asse.' jurisdiction; and to conduct the election by secret ballot as aforesaid, and thereafter report back to this Court with all convenient speed.

Done and Ordered in Chambers at Miami, Florida, this 11 day of July, A. D. 1955.

William A. Herin, Circuit Judge.

[fol. 39]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180677

THOMAS JEFFERSON, INC., A Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL 255 (AFL), et al., Defendants.

NOTICE OF APPEAL

The plaintiff Thomas Jefferson, Inc. takes and enters its appeal to the Supreme Court of Florida to review paragraphs 2, 3, 4, 5, and 6 of the decree of the Circuit Court of Dade County dated July 11, 1955, entered in the above-styled cause and recorded in the records of said Court in Chancery Order Book 1193 at page 263; the said paragraphs being so much of said decree as provides for the holding of an election by the Commissioner therein named of the employees of the plaintiff's hotel, who are assumed to be under jurisdiction of the defendant union; and all parties to said cause shall take notice of this appeal.

Anderson & Nadeau, 908 First National Bank Bldg., Miami 32, Florida, by /s/ Thomas H. Anderson, Attorneys for Plaintiff.

[fol. 41]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180677

THOMAS JEFFERSON, INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION LOCAL 255 (AFL) DAVID HERMAN, as Director of Organization of said Local, CLARENCE L. SMITH, ALBERT H. BERLIN & HARRY K. MISCHEL, individually and as business officers and agents of said Local, Defendants.

TRANSCRIPT OF HEARING—July 9, 1955

The above-entitled cause came on for hearing before the Hon. William A. Herin, Circuit Judge, in the Courthouse, Miami, Florida, on Thursday, July 9, 1955, pursuant to notice.

APPEARANCES:

Thomas H. Anderson & Herbert L. Nadeau, Esqs. of the firm of Anderson & Nadeau and Samuel J. Kanner, Esq. of the firm of Patton & Kanner, on behalf of the Plaintiff.

Carrington Gramling, Esq. of the firm of Gramling & Gramling and Jonas Katz, Esq., of the firm of Brown & Gettler, on behalf of the Defendants.

[fol. 43] Mr. Anderson: Are you ready for the first witness? I assume the Court would like some explanation of the pleadings?

The Court: I have read them.

Mr. Anderson: You have read the Complaint and Answer?

The Court: Yes.

Mr. Anderson: And you don't care for any further explanatory statement regarding it?

The Court: No.

Thereupon—Sol Cohen was called as a witness by the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Anderson:

Q. What is your name?
A. Sol Cohen.
Q. Where do you live, Mr. Cohen?
A. I live in Miami Beach.
Q. What is your street address?
A. Casablanca Hotel.
Q. What is your occupation?
A. I am manager of the Casablanca and the President Madison Hotels and have an interest in the President Madison Hotel.
[fol. 44] Q. Are those both ocean-front hotels on Miami Beach?
A. Yes, sir.
Q. Do you know the defendant in this case, David Herman?
A. Yes, I do.
Q. How long have you known Mr. Herman?
A. I met Mr. Herman in March, sometime in March of this year.
Q. Where did you meet him?
A. I met him at my hotel, the Casablanca Hotel.
Q. Would you tell the Court the circumstances under which this meeting took place?
A. I was called a few days prior to my meeting with Mr. Herman by a Mr. Al Berlin. He asked if I would sit down with he and Mr. Herman, that they wished to talk with me, and I said that I would. They met me that morning and we sat in our coffee shop at the Casablanca Hotel.
Q. Did Mr. Berlin tell you in advance what the purpose of the meeting was?
A. No, he didn't. I assumed what the meeting was since Mr. Berlin——
Q. Did he say?

A. He did not say.

Q. When he came to your hotel had you previously [fol. 45] met him?

A. Met who?

Q. Berlin.

A. Yes. I have known Mr. Berlin for some time.

Q. You had not met Mr. Herman before that time?

A. No.

Q. So Mr. Berlin introduced you to Mr. Herman?

A. That's correct.

Q. What then happened?

A. We sat down in the coffee shop and spoke about—Mr. Herman told me that he would like me, as President of the Miami Beach Hotel Association, to ask some six or so of the members of the Association to talk with him about labor relations—and, you want me to tell everything?

Q. Yes. I would like you to detail to the Court the conversation that took place, what you said and what he said.

A. And I told Mr. Herman that it was not my province to call a group of members of the Association for anything of that type, that the Hotel Association had no purpose in talking on labor relations and that I could not therefore call a group of the members of the Association for that purpose.

He asked if I would be good enough, since I know most of the hotel people and having lived around here for so many years, would I be good enough to call a few of the ocean-front hotels and give Mr. Herman the privilege of [fol. 46] having a meeting of these few hotels, get down and talk to them.

Q. Did Mr. Herman— Excuse me for interrupting you, but did Mr. Herman at that time say who he was or what his connection with the labor movement was?

A. Yes. He told me that he was the president of the New York hotel labor union. I don't know the number, I think it is No. 6. And that he was sent down here to help Mr. Berlin in an effort to organize the hotels on Miami Beach.

Q. Did he say for what purpose he meant to organize the employees of the Miami Beach hotels?

A. He told me he wanted to start a union down here; he wanted to start a local.

Q. Now go along with the conversation that you were in the process of relating.

A. I explained to Mr. Herman that I did not feel that I would want to call a group of hotels together and didn't see any reason why I should and asked him at that time whether he was there particularly to talk to me about the Casablanca Hotel.

I think I asked him that at the beginning of our conversation and he said he was not particularly interested at that time to talk to me about the Casablanca Hotel.

But, as I say, I told Mr. Herman I had no reason, no right to organize a group of hotels to sit down and talk to him and that he would have to go to each one of the hotels himself.

[fol. 47] Q. Was this the end of that conversation?

A. That was it.

Q. Did you have a further conversation with him after that?

A. No.

Q. Did you have conversation with him on the telephone?

A. Only on one occasion that I recall, and that was fairly recently after we had a fire at the Casablanca when Mr. Herman called me to try to convince me of the fact that it was not he or any of the members of his union that had anything to do with that fire.

Q. In the first conversation that you had with Mr. Herman was anything said to the effect as to what would take place if he were not dealt with or you didn't call a meeting of the hotel people?

A. No.

Q. Now afterwards did you have some trouble with Mr. Herman in the matter of putting a picket line in front of the Casablanca.

A. Yes. He did put a picket line on the Casablanca Hotel.

Q. And what was the outcome of that?

Mr. Gramling: I object, your Honor. We are not trying the Casablanca case.

[fol. 48] Mr. Anderson: We allege in the complaint that this established a pattern and that the whole purpose of the movement was to try to subdue each one of the hotels in turn and as injunctions were applied for and granted, the picket lines moved to other places.

Mr. Gramling: I respectfully suggest we are trying only the San Marino and there is no use in getting into legal actions because otherwise we would have to bring in the Sherry Frontenac and the Roney Plaza and quite a few others and it could go on interminably.

Mr. Anderson: If counsel is willing to stipulate that those events have taken place, I don't care about proving it by this witness.

The Court: I would say this: I think counsel may inform me of any pending cases that there are here if you feel it is necessary to assist me in the handling of the case. Otherwise I don't see the relevancy of it.

Mr. Anderson: Well, your Honor, the complaint alleges that this is a pattern which Mr. Herman has established here and I wanted to prove by this witness that after having had this conversation with him, he then had the further trouble with him in which the picket line was established in front of the Casablanca and he got an injunction.

The Court: He has already testified about it, I think. Let's go on to something else.

[fol. 49] Mr. Anderson: Did your Honor rule that he could or could not answer that question?

The Court: I assume there was an injunction issued, so let's go on with something else.

Mr. Anderson: He applied for injunctive relief and was granted one.

The Court: All right.

By Mr. Anderson:

Q. Was this conversation that you had with Mr. Herman, did that take place prior to the labor troubles that were subsequently started on the Beach by the establishment of picket lines?

A. That meeting I had with Mr. Herman was sometime in the middle of March and, if I recall it correctly, the first

hotel that was picketed was sometime in the middle of April.

Q. Do you know what the first hotel was?

A. I believe it was the Saxony and the Monte Carlo Hotels.

Q. And do you know what other hotels have been picketed?

Mr. Gramling: If your Honor please, I object, because while it is true that their bill of complaint refers to the general industrial unrest on Miami Beach yet we are here for the sole purpose of ascertaining whether or not picketing is lawful under the decisions of the State of Florida at the San Marino Hotel, only, the only plaintiff in this case.

[fol. 50] The Court: There is no question about that.

Mr. Anderson: Did your Honor rule on the objection?

The Court: Let me say this: I think after we get the testimony—I don't want to keep all these witnesses here—I am sure counsel can stipulate in their arguments as to what cases are pending; if you want to advise me of them, I have no objection. I don't see the materiality of it. In any event, you can advise me of it in the argument.

Mr. Anderson: All right, sir.

By Mr. Anderson:

Q. Are you familiar with the handbills that the union distributed from time to time on the Beach in connection with these several picket lines?

A. I believe I am.

Q. Will you see if you can identify those for me as being a copy of the handbills that have been distributed.

A. Yes. These are handbills that have been given out at quite a number of hotels and on the signs in front of hotels in Miami Beach.

OFFERS IN EVIDENCE

Mr. Anderson: We offer these in evidence.

The Court: Are these the exhibits that are attached to the complaint?

Mr. Anderson: Some of them, I think. Some of them are not.

Mr. Gramling: We don't object to Plaintiff's Exhibit 1. We don't object to 2. We don't object to 3; we do not [fol. 51] object to 4; five we have no objection. We do not object to 6.

Mr. Anderson: That is all from this witness with one exception. He has some documentary evidence being sent over here. If it comes in while he is on the stand, I want to reopen with him.

Mr. Gramling: I will stipulate he may be recalled for the purpose of introducing documentary evidence, if otherwise admissible.

Mr. Anderson: All right.

(The handbills referred to were thereupon marked "Plaintiff's Exhibit Nos. 1, 2, 3, 4, 5 and 6" respectively.)

Cross examination.

By Mr. Gramling:

Q. Mr. Cohen, how long have you been president of the Hotel Owners Association?

A. About a year and a half.

Q. What are the purposes of the Hotel Owners Association?

Mr. Anderson: Your Honor, I think the best evidence of that is the charter of the Hotel Owners Association which is recorded in the records of the Clerk of this Court. I will be glad to have counsel get a copy of it if he likes, or I will send for the book, but certainly that is the best evidence. [fol. 52] It is a non-profit organization, a corporation organized under decree of this Court.

Mr. Gramling: If your Honor please, he has testified he is president. He is now on cross examination and I am testing his credibility to find out how, in what capacity, how far he has attempted to testify on direct and other qualifying questions that are typical of cross examination.

The Court: I have no objection to receiving the charter and to reading it if it is offered by anybody, but I do think

I will overrule the objection to the question that you asked him. This is just a general question.

The Witness: Should I answer?

Mr. Gramling: The Judge says so.

The Witness: I didn't understand the ruling.

The Court: Go ahead.

The Witness: Generally speaking I would say that the Association was more to help the economy of the hotels, to meet and discuss general business conditions, to try to help each other in bringing down as many tourists as we possibly can and things of that type.

By Mr. Gramling:

Q. And general mutual aid?

A. That is correct.

Mr. Anderson: I object to that. That is improper. The witness didn't say that.

The Court: Overruled. He has answered.

[fol. 53] By Mr. Gramling:

Q. Is it not correct that labor relations involves an important item of the economy of the hotel industry of Miami Beach?

A. I would say rather that it involves the individual hotels just as much as it would collective hotels, or both.

Q. As a matter of fact, Mr. Cohen, anything that affects the general industry also affects the individual hotels, generally speaking; is that not true?

A. That is true.

Q. Do you recall a bulletin issued sometime before you were made president in which it was stated that one of the functions of the Hotel Association was to handle or better labor-management relations and conditions?

A. I don't remember.

Mr. Anderson: I object to that, your Honor. It is improper. It isn't proper cross. It is incompetent.

The Court: The objection is overruled. He said he doesn't remember.

By Mr. Gramling:

Q. Do you recall at the first hearing where we had Judge Pat Cannon, Judge Crawford and Judge Carroll, my exhibiting to you a bulletin of the Hotel Owners Association that stated one of the functions of the Association was labor-management relations and do you recall your answer that you were not president at that time?

[fol. 54] A. You did not display anything to me, sir.

Q. That was not displayed?

A. No, sir.

Q. If it is in the record, marked for identification?

Mr. Anderson: Just a minute, Mr. Gramling. Your Honor, that is an improper question.

The Court: Sustained.

By Mr. Gramling:

Q. Mr. Cohen, were you a member of the Miami Beach Hotel Association or Hotel Owners Association on the 16th of February, 1949.

A. I don't believe that I was; no, sir.

Q. As president, through the official records of the Association, has it come to your attention that the Association had been enjoined by the Honorable George E. Holt by order dated the 31st of December, 1948 and which order was made permanent on the 16th of February, 1949, enjoining the Association from blacklisting or from preventing any person from procuring work in any firm or corporation or to cause the discharge of any person from work or from interfering with the right of franchise of the hotel employees on Miami Beach.

Mr. Anderson: Your Honor, I object to that question. It is improper. It is improper cross. The counsel has no right to read from a court file as to some paper that is not in evidence and, as a matter of fact, the file that he refers to, if it will be further examined, will show that that suit [fol. 55] was subsequently dismissed and the whole question is improper and calls for incompetent testimony and is simply a device to try to get into this record the state-

ments that are contained in another file. It has nothing to do with this case.

Mr. Gramling: On direct, your Honor, he specifically testified he stated to Mr. Herman that it was not in his province as president of the Hotel Owners Association to call the hotel owners together or any such meeting as was requested by Mr. Herman.

Now, we would like to explore into what is his province. This is cross examination of his direct.

The Court: The objection is sustained. The Hotel Owners Association is not a party to this suit. This is simply between Thomas Jefferson, Inc. and Hotel Employees Union.

By Mr. Gramling:

Q. Mr. Cohen, you stated you first talked with Mr. Herman about the middle of March of this year. Is that right?

A. Somewhere around there.

Q. Could it have been March 20th?

A. I would imagine it would be thereabouts.

Q. Is that the only time you talked to him face-to-face.

A. If I recall, it was a day or two prior to that that I was walking across the patio of my hotel and noticed Mr. Herman and Mr. Berlin sitting on a couple of our [fol. 56] beach chairs. I walked by Mr. Herman and he told me he was partaking of the sun that day. I think it was a Sunday, if I recall. He asked me if I could join with them and I told them I could not, that I had a previous appointment and was leaving the hotel at that time and he confirmed the appointment that we had for one, two or three days after that time, and that was——

Q. He confirmed the appointment that had previously been made by Al Berlin for Monday or——

A. For Monday or Tuesday or whatever it was, to follow.

Q. How long have you known Al Berlin?

A. About 25 years. Ever since he came here, I believe.

Q. And he has been a resident of Dade County throughout that time?

A. And I have been a resident since 1921, yes.

Q. In other words, neither one of you are carpet baggers; is that right?

A. I don't know what you mean by that, sir.

Q. Mr. Cohen, is it your testimony that the Hotel Owners Association in its meetings have never discussed the labor conditions existing on Miami Beach in the hotel industry?

Mr. Anderson: If your Honor please, I object. The Hotel Association is not a party to this suit and the witness has testified that he had no authority as such to represent [fol. 57] these other hotels.

The Court: I will let him answer the question.

Mr. Anderson: I submit, your Honor, that the record of the Association is the best evidence of what action the corporation took.

The Court: The question was did they ever discuss it.

Mr. Anderson: The discussion wouldn't make any difference unless they took some action.

The Court: He can tell us whether they did or not.

(The pending question was read by the Reporter as above recorded.)

The Witness: I don't recall any direct discussions in any of our meetings of the Hotel Association pertaining to labor.

By Mr. Gramling:

Q. In other words, the Hotel Owners Association has completely ignored the current unrest on Miami Beach? Is that correct?

Mr. Anderson: Your Honor, I object. It is immaterial and irrelevant. As the Court ruled a minute ago, it doesn't make any difference about the Hotel Association. They are not parties to the suit.

The Court: I will sustain the objection to the question that has been asked.

Mr. Gramling: If your Honor please——

[fol. 57a] The Court: Next question.

By Mr. Gramling:

Q. Mr. Cohen, does the Hotel Owners Association maintain an employment office at 600 Lincoln Road or thereabouts in that neighborhood?

A. That office is maintained by a group of hotels, not by the Hotel Association.

Q. Are those hotels to your knowledge, if you know, members of the Hotel Owners Association?

Mr. Anderson: I think that is immaterial. The witness said the individual hotels maintained the office. It wouldn't make any difference whether they are members of the Association or not.

Mr. Gramling: If your Honor please, I would like——

The Court: Let him answer the question.

The Witness: I don't know whether all of them are members or not. I don't know, honestly. There are quite a few hotels that are subsidizing that office.

By Mr. Gramling:

Q. Your Hotel, the Casablanca, participates in that, does it not?

A. That's correct.

Q. Can you recall any hotel participating in that joint employment office that is not a member of the Hotel Owners Association?

A. Yes. The Empress Hotel, if I recall, is not a member of the Miami Beach Hotel Association.

[fol. 58] Q. That's correct; it isn't. That is an exeception on Miami Beach. Now can you name any other?

A. I believe the Lombardy Hotel. I am not sure, but I believe that the Lombardy Hotel is not a member of the Miami Beach Hotel Association and I believe that they are helping to sustain that employment office.

There might be one or two. It is hard for me to just answer that question without looking at some records.

Q. But you can think of only the Empress which we know is not a member of it, and the Lombardy which, according to your recollection, may not be a member of it: is that correct?

A. Yes. There might be others. I don't know.

Q. Are you aware of the practice of the hotels that are supporting this employment agency and who are members of your Association exchanging lists or knowledge or intelligences as to striking hotel workers, thus resulting in either the prompt discharge in the event of employment or if not, the non-employment? In other words, are you aware of the blacklist?

Mr. Anderson: Now, your Honor, when I tried to bring out hotel actions, the issuance of injunctions with respect to other hotels, counsel said that made no difference in this case; we were trying the right to picket the San Marino.

On his own grounds I object to this question, upon the grounds it is incompetent, immaterial and irrelevant and I [fol. 59] object on the ground it isn't in cross of anything this witness testified to on direct examination.

The Court: Sustained.

Mr. Gramling: That's all.

Redirect examination.

By Mr. Anderson:

Q. Mr. Cohen, the newspapers that you sent for have since arrived. I assume these are the ones. Can you identify this newspaper which I hand you, being a paper entitled "The Weekly Newspaper of the Hotel Workers of New York," dated June 20, 1955.

A. Yes.

Q. Where did you get that paper?

A. I had them sent to me by a relative in New York City.

Mr. Anderson: We offer this in evidence.

Mr. Gramling: We object to the introduction of this paper as introduced in evidence as not having been properly qualified and not having been shown to be relevant to the cause. I have received many newspapers and I am sure that the Chancellor in this case has, through the mails, including the Wall Street Journal, Encyclopedia Britannica. I do not know that that makes them admissible in this case.

Mr. Anderson: This paper that I offered in evidence contains a particular reference to the San Marino Hotel, which

[fol. 60] is the hotel that is involved in this case. The witness has identified it as having been sent to him through the mail by somebody in New York. It is apparently a newspaper published by the weekly newspaper of the hotel workers and has on the inside page a statement as to its authenticity and it contains the names among those constituting the editorial board of David Herman, so I think it is obviously a paper that is published in the interest of the union which is attempting to establish this picket line.

Mr. Gramling: If your Honor please, Local 255 is on trial here today. This doesn't purport to come from the Local and I don't know its relevancy.

Mr. Anderson: Mr. Herman, according to the witness told him in his first conversation he was sent down here by the New York union to organize this——

Mr. Katz: That is incorrect, your Honor. I did not understand he was sent down by the New York union, and that is not the testimony.

The Court: Just wait till you get your chance to put on your testimony.

Mr. Anderson: He said he was sent from New York; I am not sure what agency sent him. Maybe I drew on my imagination but I think I tied him in with the union. I can't quote him exactly.

The Court: If these papers make reference to this hotel, [fol. 61] I will let them in.

Mr. Gramling: But, sir, I don't believe they make reference to the San Marino Hotel.

Mr. Anderson: I will read to you from there. It reads: "Hotels involved were the Versailles and San Marino where picket lines were posted as a protest against the employers refusal to recognize and deal with the union."

(The newspaper was thereupon marked "Plaintiff's Exhibit No. 7".)

By Mr. Anderson:

Q. Can you identify this issue of the same paper, Mr. Cohen?

A. This is not the same paper. This is issued by Local 6. the union that Mr. Herman told me he is president of in New York City. This is a weekly publication.

By Mr. Anderson:

Q. Where did you get this paper?
A. I had it sent down at the same time by a relative.
Q. As the one just admitted in evidence?
A. That's correct.

Mr. Anderson: We offer this in evidence.
Mr. Gramling: Waiving argument on it, we merely repeat our objection to this as being totally irrelevant and immaterial.
The Court: I will let it in and I will look at it.

By Mr. Anderson:

Q. Can you identify that paper?
[fol. 62] A. That is the same as the first one. Later issue.
Q. You got this under the same circumstances?
A. Yes.

Mr. Anderson: We offer it in evidence.
Mr. Gramling: Same objection.
The Court: Same ruling.

(The newspaper was thereupon marked "Plaintiff's Exhibit No. 8".)

Mr. Anderson: That's all.

Thereupon—Robert Robinson was called as a witness by the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Anderson:

Q. What is your name?
A. Robert Robinson.
Q. Where do you live?
A. 4180 Nautilus Drive, Miami Beach.
Q. What is your occupation?
A. I am secretary of the Thomas Jefferson Corporation who are the operators of the San Marino Hotel.

Q. Where is the San Marino Hotel located?

A. 4299 Collins Avenue.

Q. Will you tell the Court what the accommodations [fol. 63] of that hotel are?

A. We have 133 rooms and bath, swimming pool, solarium, elevators and it is considered a fine hotel, one of the finest on Miami Beach.

Q. Is it on the ocean?

A. On the ocean front.

Q. And it is operated in accordance with the standards that pertain to an ocean-front hotel?

A. That's correct.

Q. Do you operate on a year-round basis?

A. Yes, we do.

Q. How many employees do you have?

A. Actually now about 26 or 27.

Q. Is that the average number of employees you had for the last two or three months?

A. Since the first of May.

Q. Since the first of May?

A. Yes.

Q. You have had 26 employees in the hotel since the first of May?

A. Approximately.

Q. Have you ever had any complaints from your employees as to the hours of work and the rates of pay?

Mr. Gramling: If your Honor please, I object to that question as being totally irrelevant and immaterial. I am [fol. 64] not aware of any law in the State of Florida that requires that the employees complain direct to their employer about labor-management matters and to the contrary, I would direct the attention of the Court to FSA 447.03 which recognizes the right of the employees to deal with their employer through bargaining agents of their own respective choosing.

The Court: I heard the objection but I am going to let him answer the question.

The Witness: No, I have not.

By Mr. Anderson:

Q. Have you ever had any grievance made to you by any of your employees with respect to working conditions and rates of pay, hours of labor?

A. No, sir.

Q. What is the interest which the Thomas Jefferson Inc. has in the land on which the San Marino is built? Does it own it or does it lease it?

A. The ground is leased by the corporation, sir, at a cost of $25,000 per year.

Q. Is is (sic) a long-term lease?

A. It is a 99-year lease.

Q. What sum of money represents the investment that your corporation has in this property?

Mr. Gramling: If your Honor please, I object to this question and all further questions along these lines as being totally irrelevant and immaterial because of the fact [fol. 65] that either the union is properly and lawfully picketing and any injury to the owner or to management would be incidental, or, on the other hand, if it is unlawful, then the picketing would be enjoined. It has no bearing on the legality of the picketing as to whether or not he has a large investment or a small investment or a medium one.

The Court: I think there is merit to what you say, but I will let him answer to expedite this proceeding. I will let him testify on it. It is in their complaint and I know he is going down through the complaint as I expect you will go through the answer.

Mr. Gramling: Then to save time and in the light of the Court's ruling, I will stipulate that he has a tremendous investment and that the picketing is hurting him. Will that save time? I would like to get to the merits of the case.

Mr. Anderson: The complaint alleges he has $1,700,000 invested in the property and pays $43,000 a year taxes. If they want to admit it, they can. If he wants to admit it, he can.

Mr. Gramling: We will admit it to get along with the case.

By Mr. Anderson:

Q. Mr. Robinson, have you ever had any discussions with with Mr. David Herman?

A. With reference to——

Q. Have you ever had any conversations with him at [fol. 66] all?

A. Just once, sir.

Q. When was that?

A. About a week ago I met him socially in a restaurant.

Q. Did you receive a communication or letter— Did the San Marino Hotel receive a communication from Mr. Herman under date of June 7, 1955?

A. Yes, sir. We did.

Q. Is this letter which I hand you the one your hotel received from him?

A. Yes.

Q. You will observe that there is a paper attached to the letter entitled "Request to Settle Grievances and Complaints"; was that on the letter when it came?

A. Yes.

Q. What about this first page which is entitled "Certification". Was that on there, too?

A. Yes, it was.

Q. And all of those papers were received by the hotel together?

A. Yes.

Mr. Anderson: We offer it in evidence.

Mr. Gramling: No objection.

(The documents referred to were thereupon marked [fol. 67] "Plaintiff's Exhibit No. 10".)

By Mr. Anderson:

Q. Did you send, or have your associate send a reply to that letter?

A. Yes.

Q. Is this the copy of the reply?

A. Yes, it is.

Q. Was the original of that sent to Mr. Herman in the United States mail?

A. Yes, registered.

Mr. Anderson: We offer this in evidence.

Mr. Gramling: May I question the witness in connection with this letter?

The Court: All right.

Mr. Anderson: What is it you want to ask him? You admit it is the answer you got, don't you?

Mr. Gramling: May I ask a question or two?

Mr. Anderson: Concerning the sending the letter; yes, not its contents.

Mr. Gramling: Concerning the admissibility of the letter.

Mr. Anderson: Ask the question and I will object if it is improper. Go ahead.

Mr. Gramling: To your knowledge, was this letter or the contents thereof countermanded the following day by telephone conversation?

[fol. 68] Mr. Anderson: I object to that. That doesn't go to the admissibility of the letter in evidence. I offered the copy because I don't have the original. If you will produce the original I will withdraw the copy.

Mr. Gramling: This is the letter of June 10th that is already attached to your answer. I don't object because it is a copy.

The Court: You can ask on cross about it.

(The document was thereupon marked "Plaintiff's Exhibit No. 11".)

By Mr. Anderson:

Q. Now, Mr. Robinson, was there a picket line established in front of the San Marino Hotel sometime after the sending of your letter of June 10th.

A. Yes, sir. There was.

Q. Do you know what day the picket line was established?

A. I believe it was June 15th.

Q. Has it been there ever since?

A. Yes, sir—day and night.

Q. What does the picket line consist of?

A. Sometimes four pickets, never any less. Sometimes as many as six.

Q. What do——

A. They have placards attached to them. They walk up and down and the placards say "This hotel refuses to negotiate" with whatever union name it is.

[fol. 69] Q. And that picket line has been maintained ever since June 15th?

A. Yes.

Q. Is it being maintained there now?

A. Yes.

Q. Did you have these photographs made? Are these photographs made of that picket line?

A. Yes.

Q. Is that a true and correct representation of the picket line in front of the San Marino Hotel?

A. Yes, but since them (sic) some days as many as five or six. This is only just four.

Mr. Anderson: We offer this picture in evidence.

Mr. Gramling: No objection.

(The photograph was marked "Plaintiff's Exhibit No. 12".)

By Mr. Anderson:

Q. What effect does the presence of that picket line, or has the presence of that picket line had on the number of guests that come into the San Marino Hotel?

Mr. Gramling: I object, your Honor please, because the books would be the best evidence, the books and records of the corporation. This is asking only for a conclusion.

The attendance of guests, as the Court will take judicial notice, can rise and fall with the weather, with the seasons, [fol. 70] economic conditions and the interwoven factors relating to the economy of Miami Beach and any conclusion of his that there is a rise or a fall or an effect that is attributable to a particular action would have to be established by the books and records in some authentic manner by which the Court could determine that if there is a loss of business it is attributable to the picketing and not for other causes and not have the Court accept the conclusion of the employer as to the fact that if there is a loss of busi-

ness it is attributable to picketing and not any other economic factors.

The Court: I think he wants to express his opinion. I will accept it as an opinion so I will overrule the objection.

By Mr. Anderson:

Q. Answer the question.

A. Business has then been affected considerably, particularly the drop-in business.

Q. What is drop-in business?

A. People that come down without reservations and are looking for accomodations. (sic)

Q. Can you give the Court any specific information about the number of drop-in guests that you had prior to the establishment of the picket line and since then?

A. Our drop-in business is considerable throughout the entire year, sir. Since the day picketing started, it has stopped completely. For an example, yesterday morning in the rain, when they stopped picketing because of the rain, [fol. 71] we had our first drop-ins in those two or three hours when they were not picketing in many days.

I have also observed from the front terrace cars driving along with families and they appear to be people——

Mr. Gramling: I object.

The Witness: —seeking a hotel——

The Court: Let him go ahead. There are people in cars—Go ahead.

The Witness: And they have luggage, looking for a hotel and they see the pickets and they believe that there might be some unpleasantness and they just pass by.

By Mr. Anderson:

Q. Up until the time that this picket line was established, how did your business this year compare with the business last year? Was it greater or less?

A. It was far greater, sir, until the day picketing started.

Q. Mr. Robinson, did you ever receive any response of any sort to the letter that you sent to Mr. Herman dated June 10, 1955 which is Plaintiff's Exhibit 11?

A. Not to my knowledge.

Q. Has the defendant union or any of the defendants ever given you any proof of any sort that they represent a majority or any of the employees of your hotel?

A. No, sir.

Q. Do you have a cocktail lounge in your hotel?

[fol. 72] A. Yes.

Q. Do you operate that?

A. No, sir. We do not.

Q. Is it operated by someone else under lease from your company?

A. Yes.

Q. What about the restaurant?

A. Same thing for the restaurant. It is also operated by someone else.

Q. Does the plaintiff corporation have any control over the employees of the lessee of the bar and the restaurant?

A. No, sir, none whatsoever.

Mr. Gramling: Pardon me, sir. I object and move to strike the answer. The lease or the contract existing between the hotel and the cocktail lounge and restaurant is the best evidence and in support of that I only indicate to your Honor that some of those concessions are managerial only. Some give more latitude to the operator.

We don't know what kind of control he has over the cocktail lounge or the restaurant until or unless we see the agreement and he is testifying about things in writing which is not the best evidence.

Mr. Anderson: Judge, I don't think we ought to have to encumber the record with leases. If the witness doesn't hire and fire the employees of the cocktail bar and restau-

[fol. 73] rant, then obviously he has no control. He said that the bar and restaurant were leased out and the corporation had no control over those employees.

The Court: If he already said it, let's ask some other question.

Mr. Anderson: That's all.

Cross examination.

By Mr. Gramling:

Q. Mr. Robinson, is it not correct that you are a director of the Miami Beach Hotel Association?

A. I am on the Board of Directors.

Q. And were you not a Director?

A. Excuse me. I think everybody else is. It seems that everybody of the Hotel Association is a Director.

Q. In other words, anybody that owns a Miami Beach hotel is more or less automoatically (sic) on the Board of Directors; is that correct.

A. It seems that way.

Q. You have been a member of the Board of Directors prior to March of 1955, have you not?

A. Yes.

Q. Now, on June 10th when you wrote the letter that is marked as Plaintiff's Exhibit 11, did you follow this up with a telephone conversation to Mr. Dave Herman?

A. No, sir. I never spoke to him on the phone in my life. [fol. 74] Q. Did you ever authorize anybody on your behalf to negotiate with Mr. Herman?

A. No, sir.

Q. Do you know who Mr. Samuel Levy is?

A. Yes, sir. He is my brother-in-law.

Q. Do you know of your own knowledge any conversations had by Mr. Levy with Mr. Dave Herman?

A. No, sir; I do not.

Q. What is Mr. Levy's capacity with your corporation?

A. He is an employee of the corporation. He is an associate director.

Q. Is Mr. Levy in the Courtroom this afternoon?

A. No, he isn't.

Q. Who is Mr. Burnet Roth?

A. He has acted in the capacity as an attorney for the hotel on different occasions.

Q. Has he ever acted as attorney on behalf of the hotel since the first of June and prior to the first of July?

A. Not to my knowledge.

Q. Are you familiar with the signature of Mr. Samuel Levy, your brother-in-law?

A. Yes.

Q. You, of course, are familiar with the letterhead of your corporation, are you not?

[fol. 75] A. Yes, sir.

Q. I hand you herewith a letter dated May 20, 1955 and ask you if that (sic) Samuel Levy's signature, that of your brother-in-law?

A. It looks like it.

Q. Is this the stationery of your corporation?

A. Yes.

Q. And is this correct where he signs "Samuel Levy, Associate Director"?

A. Yes.

Mr. Gramling: I ask that this be received as Defendant's Exhibit A for Identification.

By Mr. Gramling:

Q. Mr. Robinson, as a member of the Board of Directors of the Miami Beach Hotel Owners Association, I hand you herewith a photostatic copy of a letter dated March 30, 1955 and ask you did this ever come to your attention.

Mr. Anderson: I object to that. It is improper cross examination.

The Witness: I never saw it.

By Mr. Gramling:

Q. Do you know who Mr. Leon C. McAskill is?

A. Yes, sir.

Q. Now, you have scanned this letter as of right now and you don't recall ever having seen a copy of it or no [fol. 76] copy has come to your attention as a Director of the Hotel Association.

A. That's right.

Q. Do you and Mr. Levy confer with each other as to the business and operation of the San Marino?

A. We have our separate departments.

Q. What is his department?

A. He handles the insurance, tax and financial end of the business, more or less.

Q. What end do you handle?

A. Well, the operation of the hotel from a standpoint of handling the guests, rooms, staff, securing of reservations et cetera.

Q. In matters of policy such as where your hotel is going to negotiate with a union, who makes that decision—you or Mr. Levy, or both of you?

A. We would talk about it. We are not the only ones in the corporation.

Q. Does Mr. Levy have authority to speak on behalf of the corporation?

Mr. Anderson: I think that is a legal question, your Honor and it is obvious the witness has already given a factual answer to the preceding question which would furnish an answer to this.

He is now asking him for his conclusion. He asked him in [fol. 77] the prior question if he and Mr. Levy conferred with each other in the management of the business and he said they did but that there were others who had to be taken into consideration.

The Court: Let him answer the question.

The Witness: Not solely alone, no, sir.

By Mr. Gramling:

Q. I hand you this letter of June 10, 1955 and ask you did Mr. Samuel Levy have authority to send that letter?

Mr. Anderson: What is that letter? Is that Plaintiff's Exhibit 11?

Mr. Gramling: Yes.

Mr. Anderson: I would like to have the record so show.

The Witness: The original request that warranted this answer was sent to Mr. Levy and that is why Mr. Levy sent the letter.

By Mr. Gramling:

Q. But did Mr. Levy have authority to send this letter?

A. Yes.

Q. It is signed as Associate——

A. We had discussed it among all the stockholders and

had agreed to write this letter in Mr. Levy's name inasmuch as it was addressed to him.

Q. Well, in other words, concisely speaking, it is your [fol. 78] testimony that Mr. Samuel Levy, Associate Director of the San Marino did not exceed his authority when he wrote this letter. Is that right?

A. He didn't exceed his authority. He was handed the authority to do it.

Mr. Gramling: That's all.

Mr. Anderson: One more question. I am not sure whether the record is clear about this question as to whether or not your business has fallen off since the picket line was established.

Will you tell us whether it has or has not?

The Witness: It certainly has.

Mr. Anderson: That's all. Plaintiff rests.

Thereupon—DAVID HERMAN was called as a witness by the Defendant, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gramling:

Q. Will you please state your name and address?

A. My name is David Herman and I live at 301 86th Street, Miami Beach.

Q. Your occupation?

A. I am the Director of Organization for Hotel Employees Union 255 at the present time.

[fol. 79] Q. Have you ever been contacted or received any complaints in your official capacity as Director of Organization of Local 255 from the employees of the San Marino Hotel?

Mr. Anderson: Just a minute. I object on the grounds that that calls for a conclusion. You might ask the witness who complained, but to say that an employee of the hotel without any relationship to time or place certainly doesn't prove anything.

I don't know whether the person who might have done it was an employee of the hotel or not.

The Court: I will let him answer and you can cross examine.

The Witness: During the course of our work in the process of business as a union we have meetings. We have had them, we will continue to have them.

Mr. Anderson: I object to that. That is not responsive to the question.

The Court: Sustained.

By Mr. Gramling:

Q. Have you received such complaints?

A. I have received complaints. Yes.

Q. Where have you received these complaints?

A. I have received those complaints at meetings of the union that we call from time to time for the hotel employees of Miami Beach.

[fol. 80] Q. What are the nature of these complaints?

Mr. Anderson: I object, your Honor. That is hearsay and incompetent. The witness has not established first that the person who made the complaint was an employee of the hotel, and secondly, even if he did, it would make no difference; the fact that somebody in the hotel may have complained does not establish him as the bargaining agent for the hotel and until he has established that it wouldn't make any difference whether complaints were made to him or not, but plainly it is incompetent and hearsay testimony.

Mr. Gramling: If your Honor please, this is in direct rebuttal of their testimony on direct where they claim that the employees, without naming them, never came to the boss and complained.

We are showing that under the Laws of the State of Florida their employees came to the proper place and complained to their labor organization.

Mr. Anderson: He hasn't established that he had any right to receive the complaint in the first place, but in the second place, it is a wholly different matter. We asked the plaintiff's witness if he had ever had any grievances from his employees and he said no.

You can't prove that grievance existed by proving that somebody told this witness at sometime or other that he or she was dissatisfied with the conditions at the hotel. It is a [fol. 81] wholly different matter, your Honor. It is incompetent and hearsay.

The Court: Let me make this clear. The record and the file contain attached to the defense here a lot of factual matters. Is this just a predicate for getting down to the facts? Is that what it is?

Mr. Gramling: Yes. This is practically introductory, your Honor.

The Court: If it is simply preliminary, I will let him state generally whether they are complaining about the rooms being drafty or whatever it may be, just in a general way, but you are going to have to get down to cases here and get down to the facts, if you want to show, first, that these people who have not been identified were employees and——

Mr. Gramling: In the light of your Honor's observations I withdraw the question and would ask another question of this witness.

By Mr. Gramling:

Q. As Director of Organization of the Hotel Employees Union, Local 255, have you come into possession of any records of membership in your Union, Local 255, from among the employees of the San Marino Hotel?

A. Yes.

Q. I hand you herewith 28 cards designating the Hotel Employees Union, Local 255 as collective bargaining agent for the signatories thereof and 19 yellow cards, and ask you [fol. 82] did these cards come into your possession in the due course of business.

Mr. Anderson: Wait just a minute. I object to that. That question: Did it come into your possession in the due course of business is a conclusion and there is nothing in the world to indicate in this record that those people whose names may or may not appear on those cards are employees of the hotel and plainly, a factual predicate is going to have to first be established that the persons whose names are

on those cards were employees of the hotel before any other question as to the way in which this witness got into possession of the cards can be inquired into.

The Court: Overruled.

The Witness: The answer is yes.

By Mr. Gramling:

Q. Now, the yellow cards, who they designate as their bargaining agent?

A. They designate——

Mr. Anderson: The cards speak for themselves, your Honor. Without waiving my previous objection.

Mr. Gramling: I withdraw the question.

By Mr. Gramling:

Q. The yellow cards which designate the Miami Beach Hotel Trades Council as the bargaining agent is explained how or in what fashion?

Mr. Anderson: I object to that. The cards are not in evidence and counsel may not interrogate a witness about a [fol. 83] document that is not in evidence in the case.

Offers in Evidence

Mr. Gramling: I offer these cards in evidence as Defendant's Exhibit A.

Mr. Anderson: We object to both batches of cards, the yellow and the white. First upon the ground that they are incompetent; that it has not been previously established that the persons whose names appear on these cards were employees of the San Marino Hotel and that a proper predicate has not been established for the introduction of these cards into evidence.

Then we object to each batch of cards separately and severally for the reason, the same reasons, and that the cards which are the yellow cards upon the additional ground that these cards designate the Miami Hotel Trades Council as the collective bargaining agent, which is not the alleged bargaining agent that was mentioned in the letter which formed the basis of the complaint for injunction.

The Court: Do you have these parties here as witnesses?

Mr. Gramling: No, sir. We rely—and if necessary, I will lay a more elaborate predicate and take further time laying a predicate, under FSA 92.36, "Business records as evidence; uniform act," the records of which he is custodian, and if I may be heard, I would quote this very briefly, this portion of FSA 92.36 referring to business records.

The first definition is the term "business".

[fol. 84] "The term 'business' shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not."

Section 2 says,

"A record of an act"—such as the joining of a union or the designating of a union—"or event"—meaning the event of when he designated the union—"shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and mode of its preparation and if it was made in the regular course of business, at or near the time of the act, condition or event and if, in the opinion of the Court, the source of information, method and time of preparation were such as to justify admission."

The Court: Suppose you take the last part of the Statute and ask your questions based on that.

By Mr. Gramling:

Q. Mr. Herman, would you describe to the Court how these cards are prepared, filled in and finally come to your possession?

Mr. Anderson: The routine is unimportant. The question is does the witness know that these people were employees of the plaintiff corporation.

[fol. 85] The Court: The only question we have before us is whether these pieces of paper here are records kept in the due course of business of this union.

Mr. Gramling: That's right.

The Court: You will have to address your questions to that matter.

Mr. Gramling: Therefore, I have asked him to relate how they are prepared on up to how they come into his possession in order that the Court may determine that they are regular records that are duly within his custody.

By Mr. Gramling:

Q. I hand you these cards and ask how they are prepared.

The Court: Let me say this, that the Statute is unquestionably—I have ruled upon it many times—it is unquestionably applicable in my judgment to this situation. It is just a question of whether or not—and I won't hear any argument on that matter—the question is we want to follow the procedure provided by the Statute.

Mr. Kanner: I would like to make this one observation.

Mr. Gramling: I ask that this counsel identify himself on the record and please state to the Court who his clients are on whose behalf he speaks.

Mr. Anderson: Mr. Kanner has associated himself with me in this case and is fully authorized to speak on behalf of my client.

[fol. 86] Mr. Gramling: May I ask when he associated himself in this case?

Mr. Anderson: That is none of your concern.

Mr. Gramling: I object to counsel coming in from the outside—let it be for the record that he does represent the Empress and the Robert Richter.

Mr. Kanner: Let it be said I represent the Empress and let it be said Mr. Anderson and I together represented the Robert Richter and the Martinique and we have represented this hotel, and in the possible course of events, Mr. Gramling, will probably represent a number of others.

Mr. Gramling: I regret in the past you have led me to believe to the contrary.

Mr. Kanner: I don't think I have ever misled you, if that were possible.

The Court: All counsel are introduced and identified.

Mr. Kanner: I want to make one observation about this Statute. It is my understanding that the records that it refers to are those records which would be called records of original entry which the union or the organization themselves originate and themselves maintain and themselves keep.

That is the kind of records and books that this Statute refers to as being admissible on the point of being identified pursuant to this Statute.

I respectfully represent and contend before your Honor [fol. 87] that these cards are not books and are not records which this union maintains or keeps, that these cards and these records have been delivered to them, if they are authentic and if they are original entries or designations by individuals whom at this point stand unknown before the Court, stand unidentified before the Court, could be or could not be employees of this hotel.

The Court has no way at this point of knowing from the identification of these cards other than the repetition of hearsay testimony of this witness that they are employees. The signatures on those cards remain unidentified. They at the best stretch of the imagination are cards obtained by this union. They are not their records. They are records emanating outside the source of this union. They necessarily must be.

Now, because they are records emanating outside the source of this union, they are not the books and records originally of this union covered by this Statute and they should be properly identified and the people signing them should be properly identified before they serve as any predicate before this Court to determine who, if anybody, Mr. Herman or Local 255 represents.

That is the only observation I want to make before the Court with reference to this Statute. If that is the kind of evidence that this Court can predicate a judgment upon then we can be here until next September because if these [fol. 88] cards are not sufficient, they can get cards just like them some place else and I submit to your Honor if they are going to introduce in the record some cards, that they should be properly and correctly identified and they are not subject to that statute because that statute refers to the

records of the union and they are not records of the union. They got them outside the union and the people who signed them have not been identified.

The Court: Let me hear the question.

(The pending question was thereupon read by the Reporter as follows:

"Q. I hand you these cards and ask how they are prepared?")

The Court: You may answer the question.

The Witness: There are two ways in which I come into possession of these cards. One is by meetings called at the union headquarters of the employees of the San Marino Hotel at which time we ask those who are present and willing to designate Local 255 as their collective bargaining agency to sign the cards and so designate.

Another method is to send any one of a group of some 12 or 14 organizers that we have on the staff to the hotels and say, "You go over to the San Marino" or whatever hotel it may be, "and wait for the employees outside as they come out of work and talk to them and if they are interested in joining the union and designating Local 255 as the collec-
[fol. 89] tive bargaining agency, get these cards signed and bring them back to me."

In either case the cards are at all times in my possession in a file in my office at my finger tips, never out of my sight and when I am out of the office they are not accessible to anyone.

These cards are the basic records of the organization. From these we derive the information as to how many people in the respective hotels have designated the union as their collective bargaining agency.

By Mr. Gramling:

Q. And you are the custodian of these records?

A. At all times, I am the custodian of these records.

Q. What is the Miami Trades Council?

Mr. Anderson: Your Honor, I object to that. The witness has got in his hands some cards which identify that so-called organization as the collective bargaining agent.

He cannot establish now any identity between that organization and the defendant. There is nothing in there to tell that they have anything to do with each other and the evidence is plainly inconsistent and inadmissible.

The Court: Overruled.

The Witness: The Miami Hotel Trades Council is an organization of several American Federation of Labor unions, having jurisdiction among hotel employees for the purpose of avoiding jurisdictional disputes among the various unions.

[fol. 90] Because of the structure and nature of the American Federation of Labor, which is made up of essentially craft unions with carpenters and plumbers and electricians and other employees coming under the jurisdiction of various unions, we have formed a Hotel Trades Council without designating any one of the several unions as the specific collective bargaining agent for any particular worker, because there might be a conflict.

In the hotels there are workers who do maintenance work. There is no clear definition in some of the hotels of an electrician or painter or carpenter or locksmith or engineer.

There may be one man doing five or six different jobs and in order to avoid any jurisdictional conflict in the process of organization we set up this Miami Hotel Trades Council to designate one collective bargaining agency and at such time as the hotels and the unions enter into an agreement establishing the rights of the various local unions, then the workers would be assigned to the particular craft local union within the AF of L where the jurisdiction might apply.

Local 255 is one of the five unions in the Miami Hotel Trades Council. The other four are the electricians union, the air-conditioning men, the painters union and the office employees union.

By Mr. Gramling:

Q. For the purpose of collective bargaining, who speaks [fol. 91] on behalf of the Hotel Trades Council?

Mr. Anderson: I object to that. It is incompetent, hearsay, inadmissible.

The Court: Let him answer the question.

The Witness: The Employees—Hotel Employees Union, Local 255 speaks for all of the workers in the hotel only for the purpose of collective bargaining.

Mr. Gramling: I offer in evidence these cards as Defendant's Exhibit A.

Mr. Anderson: I object to the introduction of the documents in accordance with my previous objection. That is to say I object to them collectively and severally for the reasons which were set up in my objection and those that were urged by Mr. Kanner whose objections plaintiff adopts.

The Court: The witness is subject to cross examination. The witness says that they are original records. I am going to overrule the objection.

(The cards referred to were thereupon marked "Defendant's Exhibit A".)

By Mr. Gramling:

Q. Mr. Herman, have you had any dealings whatsoever with the San Marino Hotel or any of its officers or agents with regard to recognition of Local 255 as the bargaining agent of such employees as have designated Local 255 as their bargaining agent?

A. Yes, sir. I have had dealings with the San Marino [fol. 92] Hotel dating back to sometime in the middle of April, 1955.

Q. Will you relate to us your dealings on the subject of representation that you have had with the duly-authorized representatives of the San Marino Hotel.

Mr. Anderson: I object to that.

The Court: Sustained. Limit it as you did with the other witnesses. Take the time he talked to them first.

Mr. Anderson: Let's find out who they were.

Mr. Gramling: I was afraid that would be called leading.

By Mr. Gramling:

Q. When is the first time you had any conversation with anybody connected with the San Marino Hotel?

A. The first time I had any conversation was sometime in the middle of April, probably around the 17th or 18th of

April when, in response to a telegram that we had sent to the San Marino hotel requesting a conference for the purpose of collective bargaining, I received a telephone call from a Mr. William Goldring who told me——

Mr. Anderson: Wait just a minute. I object to any conversation had with Mr. Goldring on the ground that it has not been shown that he has any connection with the San Marino Hotel. It is incompetent and hearsay.

By Mr. Gramling:

Q. Who is Mr. Goldring?
A. Mr. Goldring——

[fol. 93] Mr. Anderson: Not who Mr. Goldring may have said he was but what the witness knows about. Plainly he can't offer Goldring's statements about his identity.

The Court: Let me have the file. I was under the impression this letter was in evidence dealing with Mr. Goldring. Just trying to save a little time. You may answer the question.

The Witness: Mr. Goldring told me that he——

Mr. Anderson: I object to what Mr. Goldring told him, your Honor.

The Court: Overruled. Go ahead.

The Witness: Mr. Goldring told me he was speaking on behalf of the San Marino Hotel in response to the telegram that I sent.

The Court: What do you know about Mr. Goldring?

The Witness: I know that Mr. Goldring is the manager of the restaurant in the San Marino Hotel and has been associated with the San Marino Hotel in some capacity or another of an official capacity since the San Marino Hotel has been in existence.

Mr. Anderson: The witness couldn't possibly know what Mr. Goldring's association with the hotel was, your Honor.

The Court: Sustained.

By Mr. Gramling:

Q. Have you ever received a communication from the San Marino Hotel in response to correspondence by you to them over the signature of Mr. Goldring?

[fol. 94] A. No, sir. This is over the signature of Mr. Levy.

Q. What does Mr. Levy say as to Mr. Goldring.

Mr. Anderson: Is that letter in evidence?

Mr. Gramling: I am about to put it in evidence.

Mr. Anderson: I object to him interrogating the man about a document not in evidence.

The Court: Sustained.

By Mr. Gramling:

Q. Mr. Herman, did you ever receive a telephone conversation from Mr. Samuel Levy?

The Court: Are you offering this letter?

Mr. Gramling: If I may qualify it.

Mr. Anderson: I don't know why he has to ask him about that. Ask if he received it.

Mr. Gramling: Did you ever receive this letter through the mails?

The Witness: Yes, I did.

Mr. Gramling: If that suits you, I will offer it in evidence as Defendant's Exhibit B.

Mr. Anderson: I object to it on the grounds it is incompetent, irrelevant and immaterial. It was dated prior to the demand made on the hotel for an interview with the alleged bargaining agent and the authority of Mr. Levy to write the letter has not been established.

The Court: Objection overruled.

[fol. 95] (The document was thereupon marked "Defendant's Exhibit B".)

The Court: Just so there will be no misapprehension about these cards. They have been admitted as records of the union but the only way you can prove some person is a member of the union is to have some person take the stand and so state.

So now, let's go ahead. We will have to take a few minutes recess at this time.

(Thereupon a short recess was taken after which the witness resumed the stand.)

By Mr. Gramling:

Q. Mr. Herman, will you state now—if I may ask you a leading question to get started—did you contact the plaintiff hotel on or about April 1, 1955, and if so, in what manner.

Mr. Anderson: I object to the form of the question. He didn't contact the hotel. The hotel involved in the case is owned by a corporation. The question should be did you speak to someone and with whom.

The Court: Answer the question. Go ahead.

By Mr. Gramling:

Q. Mr. Herman, did you send a telegram to anybody on or about April 1, 1955 in connection with the San Marino?

A. The first contact I had with the San Marino Hotel was a letter that I sent to Mr. Robert Robinson, who is a Director of the Hotel Association, and one of the officers of [fol. 96] the corporation operating the San Marino Hotel. That was on March 30 when I sent that letter. The next contact I had with the hotel was a telegram I sent on about the 15th of April after the picket lines had gone up in some of the other hotels. I sent a telegram to the San Marino Hotel and in response to that telegram I received a telephone call from Mr. Goldring and subsequently the letter from Mr. Samuel Levy confirming the conversation that I had with Mr. Goldring.

Q. The letter to Mr. Robert Robinson of March 30th—I hand you herewith a photostatic copy and ask you is this a photostatic copy of the letter that was sent to Mr. Robinson?

A. This is a copy of the letter. It appears to be a reprint, not a photostatic copy. It is a reprint of the letter, a photostat of the letter that was subsequently reprinted in all the three newspapers in this area.

This is a copy of the letter I sent to Mr. Robinson as indicated here: Copy sent to the Board of Directors of the Miami Beach Hotel Association. Mr. Robinson is one of them.

Mr. Gramling: I offer this in evidence as Defendant's Exhibit C.

Mr. Anderson: We object to it upon the ground that it is a self-serving declaration, that it is incompetent, that the original has not been properly accounted for; that it is addressed to some person not a party to this suit, hearsay, irrelevant and immaterial.

[fol. 97] The Court: Objection overruled.

Mr. Anderson: Judge, that letter is addressed to the Hotel Owners Association. It isn't directed to anybody connected with the——

The Court: The only testimony he has given is that he sent a copy of this letter to Mr. Robinson as a member of the Board of Directors of the Miami Beach Hotel Association. That is all he said.

By Mr. Gramling:

Q. What was the next communication with the San Marino Hotel?

(The letter referred to was marked "Defendant's Exhibit C".)

A. A telegram that I sent on or about the 15th of April addressed to the San Marino Hotel and requesting a conference.

Mr. Anderson: I object to the witness testifying to the contents of the telegram.

The Court: Sustained.

By Mr. Gramling:

Q. Did you receive a response to your telegram?

A. Yes, sir. I received a response in the form of a telephone call from Mr. William Goldring.

Q. Will you please relate that telephone call?

Mr. Anderson: I object to the witness testifying as to the conversation with Goldring upon the grounds that there [fol. 98] has been no showing that Goldring had any authority to speak for the plaintiff corporation. The testimony is incompetent and hearsay.

The Court: Sustained.

Mr. Gramling: If your Honor please, may I redirect

your attention to the letter where the corporation designated Mr. Goldring as their representative?

Mr. Anderson: I beg your pardon. That is not what the letter says.

The Court: Let's see the letter. Let's see if we don't understand each other, that the position that counsel takes he has the lease over there which he doesn't want to burden the record with and under the lease he says they have no control over the concession like the restaurant.

Mr. Goldring runs the restaurant. That is what he has argued here. This letter is signed by the Associate Director of the hotel.

If you want to ask anything about what he and Mr. Levy talked about, it seems to me it might concern a party to this suit, but you would have to show some relationship with Goldring to this. Let's see if this letter does it.

Mr. Gramling: The corporation confirmed and ratified this telephone conversation.

The Court: The objection to the telephone conversation is sustained. This is already in evidence and it says, "Con- [fol. 99] firming our telephone conversation between Mr. Goldring and you, we are advising you that we are willing to meet with you." It is signed by the Associate Director of the hotel. That is all he could say is that he replied that they were willing to meet with him.

By Mr. Gramling:

Q. After your telephone conversation, then what was the next communication you had with the San Marino Hotel?

A. On or about May 7th and pursuant to the letter which I had received from Mr. Levy which you now have in your hand——

Q. You are referring to Defendant's Exhibit B.

A. That letter suggesting a conference.

Mr. Anderson: I object, your Honor. The letter speaks for itself. It is just encumbering the record for the witness to testify as to the contents.

The Witness: Pursuant to the contents of the letter, I called Mr. Levy at the San Marino Hotel on or about the 7th of May.

By Mr. Gramling:

Q. If you will pardon me, your Honor please—you stated on April 1st you sent a telegram?

A. No, sir. On April 15 or 16 I sent a telegram. A letter was sent back to me on April 20th in response to that telegram that I sent. The letter is erroneously dated May 20th and it suggests a conference on May 3rd or 4th with Mr. [fol. 100] Robinson when he was due to return from New York City.

So that on May 7th after not having heard from the San Marino Hotel, I called Mr. Levy and asked him when we might sit down and have the conference that had been proposed in their letter in response to our request. I was told that the family was having a Bar Mitzvah that day, if that was on a Saturday. I called them on a Saturday and there was a Bar Mitzvah in the family and they weren't going to be available for a conference and would we wait until after the weekend was over and then we could try and get together.

That was my conversation with Mr. Levy.

I complied with his suggestion. I told him to have a happy Bar Mitzvah.

Q. Then what was the next communication you had with him?

A. The next communication I had with the San Marino Hotel was a letter that I sent out and it has been introduced here in evidence by the plaintiff in which I enclosed a certification from Mr. Paul Weiss and enclosing the demands of the union and again requesting a conference to discuss the specific demands.

Q. I hand you herewith Plaintiff's Exhibit 10 and ask you is this the certification of Paul Weiss and the communication to which you refer?

A. Yes, sir. This is the certification and this is the letter [fol. 101] bearing my signature and these are the grievances and demands.

Q. What was your response to that, or what reply did you receive?

A. I remember specifically that I was in this courtroom. It was on the 11th of May. It was a Saturday again and I was testifying in connection with six other cases that were

before three of the Judges. I received an urgent message to call Mr. Goldring.

Mr. Anderson: Your Honor, I object to this. It is incompetent and immaterial and hearsay and Mr. Goldring has been shown to have no authority to speak for the San Marino Hotel. The answer is not responsive anyway, and the record shows he got an answer to his letter which is already in evidence.

Mr. Gramling: To the contrary, your Honor please, it shows that Mr. Goldring had been designated as their agent with whom he was instructed to deal.

The Court: That doesn't appear from the record. Mr. Goldring's status is not clear in the record.

Mr. Anderson: He asked what reply did he get to that letter. The answer is, he got the letter.

The Court: What reply did you get to the letter?

The Witness: I received a message to call Mr. Goldring.

Mr. Anderson: Your Honor, I object to this.

[fol. 102] The Witness: That was the reply to the letter, your Honor.

Mr. Anderson: It is not. The letter is in evidence that he got in reply and states he got it in reply, and it is dated June 10th, not May.

The Witness: I am sorry. I was referring to June 10th, June 11th. I meant June 11th, your Honor.

The Court: Tell us what happened on June 10th.

The Witness: On June 11th I was in this courtroom testifying——

The Court: Tell us about this letter that is in evidence dated June 10th.

By Mr. Gramling:

Q. I hand you herewith the original of a letter dated June 10th and ask you if you received that in due course.

A. Yes, I received this letter.

Mr. Gramling: I offer this original in evidence with the copy that has been admitted in evidence.

By Mr. Gramling:

Q. Now, in connection with the receipt of that letter, did you receive any further communication from the San Marino?

A. Yes, sir. I did.
Q. And what was that?

Mr. Anderson: Wait a minute. I object unless he tells from whom he received the communication.
[fol. 103] The Court: Let's hear what he has to say. What was it?

The Witness: I received a telephone call from Mr. Goldring who told me——

Mr. Anderson: I object to any conversation with Mr. Goldring on the ground that he has nothing to do with the matter and plainly he could not overrule the action of the Board which was taken on the sending of the letter of June 10th as testified to by the witness Robinson.

Mr. Gramling: Your Honor, if I may be heard on that very briefly. When the San Marino, Samuel Levy as Associate Director, had recognized, ratified and confirmed a previous conversation with Mr. Goldring, Mr. Dave Herman as a reasonable, normal, prudent person receiving a telephone call from Mr. Goldring was authorized and properly received the communication from Mr. Goldring and properly dealt with him because the principal has held Mr. Goldring out as a due and proper agent to discuss these matters.

The Court: All right. I am going to let him testify about this conversation he had with Mr. Goldring who was understood to be—it hasn't been proved but admitted by inference that he runs a restaurant there. Is that right?

The Witness: Yes, your Honor.

Mr. Gramling: He does more than that, your Honor.

The Court: Let's hear what he has to say. It is 4:25. I [fol. 104] want to hear what he has to say.

The Witness: Mr. Goldring told me that there was a letter in the mail to me in response to the letter that I had sent containing the demands. Now, he said, "This letter is the form letter that had been prepared by lawyers, but you are to disregard it and instead of that I would like to set up a meeting with Mr. Burnett Roth, our attorney for the San Marino Hotel and yourself as soon as possible so that we can try and get down to cases, negotiate this business and see if we can arrive at a settlement."

Mr. Anderson: Now, your Honor, I would like to move—I don't want to delay the matter but I do have to move to strike the answer because of the obvious incompetency of

the statements he made in it, because it overrides what was established to be the action of the corporation as testified by the witness Robinson, so I move to strike his answer upon the grounds that it is incompetent and hearsay.

The Court: Motion granted.

By Mr. Gramling:

Q. What happened after that in your dealings with the San Marino?

A. I left Miami that day and returned on the 15th of June. Upon my return I telephoned Mr. Burnett Roth, attorney for the San Marino and I had a conversation with Mr. Roth about the conference that had been held between Mr. Roth and the attorney for Local 255.

[fol. 105] Mr. Anderson: Your Honor, I will have to object to this. The witness Robinson testified that Roth did not represent him and it is hearsay and it is incompetent.

Mr. Gramling: To the contrary, your Honor, he says that Mr. Burnett Roth has from time to time represented him.

Mr. Anderson: He said he hadn't represented him since sometime in April in connection with this matter. I can't swear to it but Mr. Robinson is right here and I will let him reaffirm what he said but it certainly was not in June of this year.

The Court: Objection overruled. Go ahead.

The Witness: Mr. Roth had met with Mr. Ben Gettler, one of the attorneys for the union. I asked him to meet with Mr. Roth during my absence to try and work out an amiable settlement of the dispute and upon my return to the city, Mr. Gettler informed me that he had been unable——

Mr. Anderson: Plainly, your Honor, the conversation with Gettler is inadmissible.

The Court: Sustained.

The Witness: I called Mr. Roth to confirm the information that had been given me by the people who remained here in my absence and Mr. Roth informed me that it was impossible to work out any kind of arrangement with the San Marino Hotel, that much as he—Mr. Roth—would like to [fol. 106] and much as the hotel would like to, they are pre-

vented by the fact that they are associated with the hotels in the Miami Beach Hotel Association and for the San Marino Hotel to settle with the union when all of the other hotels are fighting the union would be a breach in their ranks and they would consider it a betrayal on their part to their fellow hotel operators and for that reason, Mr. Roth told me it was absolutely useless and he is sorry to inform me that no agreement can be reached.

That was my last contact with the San Marino Hotel.

By Mr. Gramling:

Q. What happened after that?

A. After that the pickets went on. On the 15th of June, and they have been picketing ever since. They have picketed peacefully, in a gentlemanly way, no violence of any kind and as far as I know, picketing lawfully.

Q. What happened on May 25, 1955?

A. On May 25, 1955 there was an election conducted by the union, a secret ballot election involving some 3,000 hotel employees on Miami Beach, included among them the employees of the San Marino Hotel.

Mr. Anderson: I object to that. It is incompetent and hearsay and it is irrelevant. There is no evidence before this Court that this witness knows who the employees of the hotel are and the cards that he has introduced in evidence are plainly incompetent to sustain his position, and furthermore, the letter that he wrote to the plaintiff hotel cor- [fol. 107] poration itself was insufficient to establish this union as the bargaining agent, to give the plaintiff hotel owners any notice to that effect so it doesn't make any difference what kind of an election they have.

The Court: Overruled. All right.

Mr. Anderson: Your Honor, he might just as well have said, "On May 25th the sun came up." Why can't his question be more specific?

The Court: Get a specific question.

By Mr. Gramling:

Q. Did the employees of the San Marino Hotel participate in this election?

Mr. Anderson: I will make my objection, your Honor, upon the grounds that I just enumerated. That is not the way to prove that this is the bargaining agent for the employees of the San Marino Hotel and it is entirely the conclusion of this witness and the Court has already ruled that Mr. Gramling has to bring these people in and prove that they participated in that matter.

This witness certainly cannot testify as to the records of a union showing the participation of some unnamed and unidentified employees of the San Marino to substantiate the union's claim that it is the bargaining agent for those employees.

Mr. Gramling: If your Honor please, they have repeatedly protested that we didn't have a secret ballot. Now [fol. 108] we testify we did have a secret ballot and the next thing you know they are going to want the voters to come in and testify as to how they voted, which is contrary to the State of Florida, because certainly that would not be a secret ballot.

Now, we had an election, let's say, between the Republicans and the Democrats. That can be testified to. What was the outcome of the election can be testified to or can be certified. The ballots themselves can be put into evidence. What more can be asked of people trying to prove in a court of equity that they are exercising their constitutional liberties pursuant to law and that they have made every effort to follow the law and actually have followed the law?

The Court: I am going to let him testify about the election, how it was conducted and who participated in it if he knows. If he doesn't know, of course he can't testify. You can cross examine him on it. It is in the pleadings. I want to find out what happened, what they did.

By Mr. Gramling:

Q. Tell us about the election, please.

Mr. Anderson: Judge, I object to that general question. I think Mr. Gramling ought to ask a specific question to which I can make some sensible objection, but just to say, "Tell us about the election" doesn't get us anywhere.

By Mr. Gramling:

Q. When was the election conducted?

[fol. 109] Mr. Anderson: What election?

The Witness: Which question shall I answer, your Honor? The election was conducted by secret ballot. We tried to get the President's Council of the City of Miami Beach to conduct the election. They declined.

We tried to get the City Clerk, Mr. Tomlinson, to conduct it, but it was just on the eve of the Miami Beach city election and he said he was over his neck in ballots himself with absentee ballots already coming in.

We appealed to some citizen to conduct the election, and we wound up with a radio commentator, Sam Gysen, who volunteered his services. The election was conducted under his supervision in three localities, at 1575 Washington Avenue, the strike headquarters, at 920 Alton Road on Miami Beach, and at Biscayne Boulevard and Northeast 8th Street in Miami, the headquarters of Local 133 of the Hotel and Restaurant Employees Union.

Approximately 3,000 hotel employees participated in the election. Each hotel employee when coming to vote was required to identify himself to be a hotel employee of a specific hotel by producing either a locker key from the hotel, the most recent pay check from the hotel or the police card which is issued by the Miami Beach Police Department and the Miami City Police Department to identify hotel employees.

The election was by paper ballot. There were registrars [fol. 110] to take the registration of each worker who came to vote. They had to sign their own name and there was then a ballot given them. They took the ballot either to a booth or to a private office, depending on the location where they voted.

In some of the locations we had booths, in others we had private offices off the main auditorium where the workers were permitted to vote in privacy. They marked the ballot, came out and deposited it into a box.

By Mr. Gramling:

Q. Did they make a record of their name and hotel prior to receiving this ballot?

A. I said that they registered as they came into the polling place by signing their name and indicating the hotel where they worked, whereupon the registrar handed them a ballot with the name of their hotel written in there by the registrar. If a worker said, "I am from the San Marino"——

Mr. Anderson: I move to strike the witness's testimony on the grounds that it is hearsay. He has certainly no right to testify as to what some unnamed person walked in and said to somebody when the witness was not present and didn't hear it.

The Court: He objects to the example. I am just listening to the form of what occurred on that day. I don't know what occurred. Go ahead.

The Witness: A worker came into the polls, signed his [fol. 111] name and the hotel and was asked by the registrar to produce an identification and upon producing the identification was handed a ballot with the name of the hotel written on there by the registrar.

The worker would mark the ballot and deposit it into the ballot box. I personally visited all the three locations where the voting took place. I observed the manner in which the voting was conducted and I went back to my own office after making a cursory examination of the procedure.

Q. How were the results of these ballots compiled?

A. The results of the balloting were counted at 920 Alton Road that same night in the presence of about 200 or 250 to 300 people who were sitting around and watching the tally sheets and tellers and up until about—the polls closed at 9 o'clock and up until about 10:30 Mr. Gysen was present to supervise the balloting and then he had to go to his radio broadcast and at that time he left his deputies in charge and the balloting was completed along about 12 or 1 o'clock that night with respect to the vote that was case. (sic)

Over a period of the next day the ballots were segregated into hotels and the vote for each individual hotel was then compiled by Mr. Gysen's deputies under his supervision.

Q. Now, Mr. Herman, did anybody in connection with the San Marino ask you for any evidences as to the outcome of this secret ballot prior to the filing of this instant suit?

[fol. 112] A. No, sir.

Q. Other than this letter of June 10th which is marked Plaintiff's Exhibit 11, did anybody ask you to give them the names of your members or other type of proof that you represented any of the employees?

A. No, sir.

Q. What was the only explanation, if there was only one that you ever received, as to their refusal to negotiate?

Mr. Anderson: I object to that on the ground that the letter which has been introduced in evidence by both parties is the best evidence of the plaintiff hotel corporation's position in this matter and any other evidence would be incompetent and inadmissible and hearsay.

The Court: I will let him answer the question.

The Witness: The only explanation that I have ever received, and I received it from Mr. Burnett Roth, the attorney from the San Marino, I received from Mr. Goldring, the spokesman for the Hotel——

MOTION TO STRIKE THE WITNESS'S STATEMENT AND GRANTING THEREOF

Mr. Anderson: I move to strike the witness's statement upon the ground that they are hearsay and contrary to the previous ruling of the Court.

The Court: Motion granted.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Gramling: If your Honor please, in the light of your Honor's ruling which I must confess was totally unexpected [fol. 113] by me, to the effect that the cards of membership are not admitted in evidence as a record of an act, condition or event, meaning the act, condition or event of the individual persons joining this union or designating this union as their bargaining agent and stating that as in the case of a power of attorney that a power of attorney is literally not admissible or not to be dealt with or given full faith for what it stands unless the principal is brought in and heard to confirm the power of attorney; in the light, in other words, of the fact that the business records have been admitted in evidence in one sense of the word and yet have

been denied any evidentiary value whatsoever on the other hand, I must in all sincerity request of this Court a continuance for the purpose of obtaining the employees who signed these cards who will then testify to your Honor that "Yes, that is my signature; yes, that meant to designate the union; yes, everything that is on those cards means what it says."

In other words, I am taken by complete surprise that records and signatures with no——

The Court: I don't want to waste a lot of your time now. The only ruling the Court has made is that these have been admitted as business records.

This witness has not been cross-examined. Let's go ahead with your examination and cross examination of this witness. I will hear you on the matter of what weight shall be [fol. 114] given to these cards. We can argue after we get through with the testimony.

Mr. Gramling: My dilemma is at this time I would have to surrender the witness when I feel I haven't completed the case. However, at this time, and in the light of the ruling——

The Court: Ask the witness any question you want to. It is subject to objection, of course.

Mr. Gramling: In the light of your ruling, further questioning along the lines I want would be objectionable. Therefore, in the light of the ruling, I will surrender the witness for cross examination.

Mr. Anderson: We have no questions.

Mr. Gramling: Then, sir, may I renew my request for a continuance in the light of the surprise in which I find myself taken.

The Court: The only ruling that the Court has made is that these cards are now admissible as in the du[illegible]ourse of business of this union as original records. You started arguing another matter. I simply made a statement into the record that I anticipated seeing all these people, I assumed you had witnessed who were going to present testimony as to whether they were or were not members of the union.

Mr. Gramling: And we have heretofore adopted that practice and had thousands of them standing outside on a

[fol. 115] Saturday who so testified until it was pointed out the best evidence—they are only testifying to a thing in writing—the best evidence is the thing in writing. Then when we offer the card, they say no; the best evidence is the person.

We have been bringing both at the same time.

The Court: I will hear you both argue on this matter.

Mr. Gramling: Let me recall Mr. Herman for just one narrow portion of interrogation.

Thereupon—David Herman, was recalled by the Defendant, and having been previously duly sworn, was examined and testified further as follows:

Examination.

By Mr. Gramling:

Q. Mr. Herman, you were present when Mr. Sol Cohen testified, were you not?

A. Yes.

Q. Will you please state to us what dealings you had with Mr. Cohen.

A. I had several conversations with Mr. Sol Cohen, two of them in person and a number by telephone. The first appointment that I had with Mr. Cohen was arranged by Mr. Berlin on a Sunday at Mr. Cohen's hotel, the Casablanca, where we had a preliminary conversation about the problem of the wages, working conditions of the hotels, the employees [fol. 116] of the hotels on Miami Beach in general since he was the President of the Miami Beach Hotel Association.

Mr. Cohen was pressed for time that day and suggested we meet when he would have more leisure and be able to devote more time than he could that Sunday and so we met again by prearrangement two or three days later and during the course of an hour and a half's conversation we traveled over the entire area and discussed everything pertaining to labor relations, wages, the conditions, the hotel incomes, the hotel structures, every phase of the hotel operation as it has to do with the possibilities of getting

improvements in the wages, hours, conditions of employment of the hotel employees who were at that time in the process of being organized.

I testified at length about this conversation in previous cases, and——

Q. This case is standing on its own merits. Will you please proceed.

A. We discussed the general situation as it pertains to every hotel, including the San Marino, and the main purpose was to try and get a conference with the Hotel Association to see if we could work this thing out in an orderly manner to avoid picketing, to avoid strikes, to avoid lockouts, and everything else that enters into a labor dispute.

I was aware at that time of the injunction that had been obtained by this union previously——

[fol. 117] Q. Had that ever been exhibited——

Mr. Anderson: Your Honor, you have ruled this whole case out of the consideration of this case and I object to the witness making a voluntary statement about it.

It is improper rebuttal testimony; there has been no proof of this by the plaintiff. The Court has held that the Hotel Owners Association is not a party to this lawsuit.

Mr. Gramling: And to the contrary, your Honor please, now in rebuttal in direct response to Mr. Cohen's testimony, we want to put on counter-testimony and that is the only reason this witness is on the stand.

Mr. Anderson: I never asked Mr. Cohen about that lawsuit. I didn't object as long as the witness was disputing statements that he said Cohen made but I didn't interrogate Mr. Cohen about that lawsuit.

That was introduced in this case on cross examination over my objection by Mr. Gramling and your Honor sustained the objection.

Mr. Gramling: He testified it was not within his province, if your Honor please, to call a meeting of the Hotel Owners Association. We would like to go into whether or not it was his province.

They are telling us we were talking to the wrong man. We would like to show we were talking to the right man.

Mr. Anderson: Even assuming that the Hotel Owners As-
[fol. 118] sociation had authority to deal in this situation, that still would not cure the defects that existed in the letter of June 8th or 9th from the union to the San Marino Hotel.

Your Honor has already ruled on that. I don't see why counsel insists on trying to bring it back in the case. It is a case that was dismissed several years ago.

The Court: Sustained.

Offer in Evidence

Mr. Gramling: I offer in evidence at this time, if your Honor please, and there is a predicate for it in the pleadings, the Court file in the case recently pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, 121214 wherein the Hotel and Restaurant Employees and Bartenders Union, Local 133, AF of L, were plaintiffs and the Vanderbilt Hotel Corporation and others, including the Miami Beach Hotel Owners Association were defendants and particularly by reference to the order of the Honorable George E. Holt, dated February 16, 1949 recognizing the Hotel Owners Association as being the spokesman or the agent or the proper person or entity of the aggregate hotels of Miami Beach wherein the temporary restraining order theretofore entered after the taking of testimony, was made permanent against the Association, its officers, agents, members and employees, and as a basis for the materiality of that, I would state that that being the settled law of the Circuit, with nothing to the contrary and that case never having been appealed or this ad-
[fol. 119] judication ever altered or changed, that the defendants certainly were authorized and entitled to rely upon the agency up to that time when the San Marino disavowed the agency and acted through their own named agency, such as Goldring and Levy.

With that, I offer this in evidence as Defendant's Exhibit D.

Mr. Anderson: We object to it, your Honor, on the grounds it is incompetent and immaterial and has no bearing on the issues of the case.

Mr. Gramling: I don't believe the law of the Circuit is irrelevant.

The Court: The only issue here is between the San Marino and this Thomas Jefferson Inc. and the union and regardless of what understandings may have occurred between the Hotel Association in this case or Mr. Cohen, I don't see the connection. They are not a party here.

Mr. Gramling: That's all.

Mr. Anderson: How many more witnesses do you have?

Mr. Gramling: I am ready to rest.

Thereupon—Robert Robinson was recalled by the Plaintiff, and having been previously duly sworn, was examined and testified further as follows:

[fol. 120] Examination.

By Mr. Anderson:

Q. Did you prepare a list of the employees of the San Marino Hotel from the books of the corporation?

A. Yes, from the payroll.

Q. Is this a correct copy of the list of the employees of the hotel that is taken from your payroll?

A. Yes, it is.

Offer in Evidence

Mr. Anderson: I offer it in evidence.

The Witness: As of June 15th.

The Court: Is June 15th the day that this picketing began?

Mr. Anderson: Yes.

Mr. Gramling: If your Honor please, may I examine the witness on the admissibility of this; in other words, cross on this prior to its being admitted in evidence.

The Court: Go ahead.

By Mr. Gramling:

Q. Mr. Robinson, in what capacity is Doris Loewinstein?

A. She is a bookkeeper.

Mr. Anderson: Your Honor, that is not interrogating the witness as to the admissibility of the document. Let it get in evidence and let him cross examine if he wants to about who these people are. I offered it as a correct list of the employees of the hotel.

Mr. Gramling: They may have been employees who have [fol. 121] nothing to do with the jurisdiction of Local 255, not claimed under its charter or by-laws. We have no interest, for instance, the very first one is a bookkeeper. How many are assistant managers, how many of them are representatives of management in a managerial or checking capacity.

The Court: I will let you ask on cross examination.

Mr. Kanner: What is important is whether or not that is all of his employees.

Mr. Anderson: What work they do I think is plainly a matter for cross examination.

By Mr. Gramling:

Q. Are these all your employees?

A. They are on the basis of my payroll.

Q. As of June 15th?

A. Yes.

Q. All right. How long does an employee stay on your payroll before he is listed as, say, a regular employee?

A. That list was made up from the payroll as of June 15th.

Q. You have quite a labor turn-over, do you not?

A. No, sir. We don't.

Q. On an average, how long have these employees been your employees?

A. If you give me a copy I can tell you. Doris Loewinstein was with us 14 years.

Q. In other words, have these in the main, these names [fol. 122] been on your payroll for a period of let's say 30 days?

A. For the largest part, yes.

Q. From what was this list made?

A. From our payroll as of June 15th.

Q. And your payroll of June 15th would also show social

security numbers, withholding tax and the other deductions, would it not?

A. Yes.

Q. Kept for Federal income tax purposes as well as social security and unemployment compensation purposes?

A. Yes.

Mr. Gramling: Then I object to the introduction of this, if your Honor please, because the records of the corporation would be the best evidence. I would have no way of knowing whether these people were ever employed or whether half of them were employed on June 15th for this purpose, or whether the thing is even fictitious.

The only way would be—that is why we have certain laws of evidence—pertaining to the best evidence. Let them give us the social security registrations on their payroll where a Certified Public Accountant could prove and state that they were employees and had been employees over that period of time covered in this litigation.

Mr. Anderson: Mr. Gramling is going to be looking at himself in a mirror, your Honor.

[fol. 123] The Court: I overrule the objection and I recognize a good deal of validity in the objection that has been made because of the fact that this is just a take-off on the original records, but the witness is here for you to examine.

Mr. Kanner: This payroll is as of the date picketing began.

The Court: All right.

(The document was thereupon marked "Plaintiff's Exhibit No. 13".)

By Mr. Anderson:

Q. Mr. Robinson, have there been any substantial change in this from June 7, 1955?

Q. No, sir.

Q. These were all employees on June 7th, also?

A. Yes.

Mr. Anderson: That's all.

Cross examination.

By Mr. Gramling:

Q. In what capacity was Doris Loewenstein hired?
A. Miss Loewenstein is a bookkeeper.
Q. Sylvia Adelman?
A. She handles correspondence—typing.
Q. Bertha Smith?
A. Also a typist and bookkeeper.
Q. Wiley Cooper?
A. Room clerk.
[fol. 124] Q. Thomas Larco?
A. Room clerk.
Q. Curtiss Laing?
A. Night clerk.
Q. Dora Cann?
A. Telephone operator.
Q. Margaret Farrell?
A. Telephone operator.
Q. Madelaine Kelly?
A. Relief telephone operator.
Q. Cy Stein?
A. Superintendent of Service.
Q. John Benson?
A. Bell man.
Q. Harry Aiguss?
A. Also a bell man.
Q. William Alday?
A. Bell man.
Q. Robert Lowenthal?
A. Also a bell man.
Q. Charles Fleigelman.
A. Bell man.
Q. Joseph Scelzi?
A. Bell man.
Q. Thomas Quick?
[fol. 125] A. I believe he is night bell man. I don't know his last name.
Q. You don't know him for sure?
A. I don't know his last name for sure but I know there is a night bell man named Thomas.

Q. Doris Engel?
A. Elevator operator.
Q. Winnie Spintag?
A. Elevator operator.
Q. Louise Fitzpatrick?
A. A maid.
Q. Winifred Dagnin?
A. Housekeeper.
Q. Ethel Trumpler?
A. Maid.
Q. Agnes White?
A. Maid.
Q. John Townsend?
A. Houseman.
Q. John McKeefer?
A. Houseman.
Q. Nevo Johnson?
A. Houseman.
Q. James Gross?
A. Houseman.
[fol. 126] Q. Theodore Knapp?
A. Engineer.
Q. Harold Carson?
A. Engineer.
Q. How many of these people on June 15th got paid a wage for a six- or seven-day week ending June 15th?

Mr. Anderson: I object to that. That is improper cross; the length of time for which they got paid makes no difference.

Mr. Gramling: If your Honor please, it is well known that they might have a bell man today and another bell man tomorrow and another time and give us a list as of June 15 of 30 on their payroll when they are only working two.

Mr. Anderson: If that is what he is getting at, I don't object. The witness testified they were working there on June 7th.

The Court: Go ahead.

The Witness: We do have a turn over and the only department we ever have a turn over is in the bell man

department. Most of those bell men were there and are still there and were there before, some of them as long as two or three years.

By Mr. Gramling:

Q. How many bell men do you work at a time?
[fol. 127] A. According to the season.

Mr. Anderson: That question has nothing to do with the identity of the employees so I object to that. If he wants to ask whether these people were there on June 7th I have no objection, but how long he works them and how long they worked has no materiality.

By Mr. Gramling:

Q. How many of these are regular, full-time employees?
A. I would say all of them are.
Q. Do you work six bell men at the same time?
A. No, sir. A man only works eight hours. For instance, a man will come in from eight to four, from four to twelve and then there is different shifts. There are six bell men there. They work on different shifts.
Q. But you did utilize these six bell men on a full-time basis during the week from June 7th to June 15th.
A. Yes.
Q. What about Henry Bradley, a houseman. Was he a regular employee?
A. I believe he was a houseman. I don't know whether he was regular or not. I would have to refresh my memory or speak to somebody.
Q. What happened to him the day after the picketing began, do you recall?
A. No, sir. I do not.
[fol. 128] Q. Do you remember an Elizabeth Peterson?
A. No.
Q. You don't recall her as having been a maid?
A. Yes, as a maid. I don't recall her in particular.
Q. Where is her name on this?
A. I don't know. That was made up as of June 15th. If she was an employee, her name is there. If her name isn't there, she wasn't an employee.

Mr. Gramling: That's all.

The Court: Mr. Robinson, you signed this complaint for injunction and other relief?

The Witness: Yes.

The Court: Did you read it?

The Witness: Yes. I believe I did.

The Court: The statement is made in this complaint and it is a sworn complaint, that you and the hotel which you represent, this corporation, was willing to negotiate. That phrase was used in here somewhere. Paragraph 8 of the complaint states that the plaintiff communicated by letter with the defendants and informed them if the union would furnish satisfactory proof that it represented a majority of the plaintiff's employees and had been designated to represent them, that the plaintiff would negotiate the alleged grievances.

Mr. Anderson: Your Honor, that statement is incorrect. The letter does not say that. The letter is in evidence and I [fol. 129] think I am responsible for that misstatement in the complaint.

The Court: Further in the complaint it says the plaintiff stands ready, willing and able to negotiate with said union if and when said union can furnish to the plaintiff evidence that it does, in fact, represent the plaintiff's employees.

Mr. Anderson: May I call your attention to a statement in a Federal case which quotes a statement of the Supreme Court of the United States on that point.

The Court: I am just asking if he means what this says, that the plaintiff stands ready, willing and able to negotiate with said union if and when said union can furnish to the plaintiff evidence that it does, in fact, represent the plaintiff's employees.

That is all I am asking.

The Witness: If they can show me proof that they represent the majority of my employees, I certainly will talk to them, if they remove the pickets.

Mr. Gramling: We may be able to settle a lawsuit right here and now. What kind of proof do you want?

Mr. Anderson: Just a minute, Mr. Gramling

Mr. Gramling: If we can settle the suit, you are not mad about it, are you?

Mr. Anderson: I wanted to call this to your Honor's attention: In the Taxacana Bus Company case the Court cited [fol. 130] a statement from the Supreme Court of the United States and the Virginia Railway Company in which the Court said the law imposes the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other.

This hotel's obligation under the law is to treat only with the collective bargaining agent who has been selected by a majority of the employees at an election lawfully and duly called and held.

The Court: I interpret what he said in that context.

Mr. Anderson: I just didn't want Mr. Gramling to take advantage of the witness and try to get him to admit now——

The Court: I haven't heard Mr. Gramling say anything yet.

Mr. Gramling: Mr. Robinson, what proof would be satisfactory?

Mr. Kanner: We object to that. Mr. Robinson is represented in court by counsel. That is why this case is being tried and certainly counsel should be permitted to object and opposing counsel should not be permitted to propound what is not true and, in fact, legal questions to the witness that his counsel have been retained to answer.

The Court: All right.

Mr. Kanner: We object to that question on that ground.

The Court: I simply asked him about the statement in [fol. 131] the sworn bill which he signed. I believe all the other questioning had been concluded at that time.

Mr. Gramling: Are you through examining this witness?

The Court: I thought everybody had finished examining and I simply asked this question after everybody had finished. If you are not finished, you are welcome to go ahead.

Mr. Gramling: I would like to refer to a letter of June 10th--with this list of names he has opened up a field I want to rebut.

By Mr. Gramling:

Q. I hand you herewith Plaintiff's Exhibit 11 and ask you that the submission of the list of the names of our members

who you had as your employees, I ask you is that the only proof or the only terms under which you would negotiate with us?

Mr. Anderson: Your Honor, it is unfair for Mr. Gramling to propound legal questions to this witness at this stage of the game. Here is the point on which this case turns: On June 7th they demanded that he deal with them a a collective bargaining agent of the employees. It was then their duty to furnish Mr. Robinson with the proof of their representation. They can't come in and supply the omission now on July 7th a month later and certainly he is not entitled to ask this witness questions relating to his legal process as to which he is represented by counsel in this case, and simply because your Honor asked the man a question [fol. 132] about the contents of his complaint, should not give Mr. Gramling an opportunity to explore the witness's mind as to what he might not do; if they didn't furnish evidence on June 7th that they were the collective bargaining agent for this hotel, nothing we can say now can change their position and certainly the whole thing is——

The Court: If you are through examining the witness let's hear the argument of counsel.

Mr. Gramling: Call Mr. Herman.

Mr. Anderson: The plaintiff rests. That concludes the case.

The Court: You want some sur-rebuttal?

Mr. Gramling: Yes.

The Court: What is the purpose of it?

Mr. Gramling: To bring out what designations or what groups or crafts we represent in the hotel or over which we claim jurisdiction. For instance, we have bookkeepers, typists, room clerks and people whom we don't make any pretence of representing. They are part of management and administrative functions.

We represent bell men, elevator operators, housekeepers, maids, and housemen in this list and it certainly should be clarified in the record now.

The Court: I imagine they will stipulate that you don't represent the typists or the other people.

Mr. Anderson: If they say they don't, we will.

[fol. 133] Mr. Kanner: Assuming that their cards are

what they say they are. They can only be what the cards say they are and the Court only has to match the cards against this list.

Mr. Gramling: We don't mean to include any clerks, bookkeepers and I would like to have the record straight rather than any protestations of counsel.

The Court: I think we can put a stipulation in the record on it.

Mr. Anderson: If Mr. Gramling will state what class of employees the union purports to represent, we will agree with his statement.

Mr. Gramling: I will stipulate only that we undertake to represent only the classifications that are designated by the cards.

Mr. Anderson: All right. We will agree with what he said. Your Honor, we made a list of the names and in fact, the contents of those cards from the actual cards, and for the convenience of the Court I would like you to consider it.

It is just a take-off of the cards themselves and simply offered for the convenience of the Court.

Mr. Nadeau: For your information, there are three of our employees on your list.

The Court: All right. Counsel may proceed with the argument.

(Thereupon counsel for the respective parties argued to [fol. 134] the Court.)

STATEMENT BY COURT RE GRANTING OF TEMPORARY INJUNCTION RESTRAINING THE PICKETING, ETC.

The Court: We are limited to what has been presented to us here. As I understand this case, from the examination of the pleadings and from the testimony that has been taken by the plaintiff and defendant, both have asserted, among other things, that they are willing to negotiate but the plaintiff wants proof that the defendant represents the majority of the employees. That is the way I understand the statement here.

The plaintiff stands ready, willing and able to negotiate with said union if and when said union can furnish to the employer evidence that the union does, in fact, represent

the said employees and that gets us back to the letter of June 10th to which the defendant says they did not reply because they feared at that time that their names, if supplied, would be blacklisted, so they have submitted a list of cards from their records and it appears from an examination of those cards and compared with the list which the plaintiff has submitted of employees as of the date the picketing began, that there are several names included in some of the cards that—Miami Trades Council cards—there are three names that are the same that are on this list of employees that Mr. Robinson testified about.

That list of employees admittedly contains a number of people who are employed who are not in categories that would be eligible for membership in the defendant union.

The defendant has several prayers. The plaintiff has a prayer for temporary injunction to be made permanent upon [fol. 135] final hearing. Defendant's prayers are for the appointment of a Commissioner to conduct a secret ballot of the employees and then have a decree prepared upon the outcome of that determination, I assume, which would decree the defendant to be the authorized agent of the employees if the election revealed that to be the case and then a final prayer for a mandatory injunction requiring the parties to negotiate and bargain in good faith, assuming, of course, that the defendant union was determined to be the authorized agent of the employees.

The Court is disposed to take the following action at this time. Since, as a Court of equity, I believe it is important to determine, if we can, what the facts are, and very frankly I am not sure that the evidence here is such that the Court can enter a final decree.

I am disposed to grant a temporary injunction restraining the picketing pending the conducting of a secret ballot of the employees who are eligible for membership in defendant who were employed by the hotel on the 15th of June, the day the picketing began.

The Court will appoint a Commissioner to conduct this secret ballot and will allow a period of 30 days for the completion of this. That thereafter the Commissioner will report to the Court and we will hear testimony further if it is necessary unless there can be a stipulation of the facts or

findings of the Commissioner; that there shall be produced [fol. 136] for examination by the Commissioner the payroll records of the plaintiff as of June 15 to determine who the employees were. As Mr. Kanner has said the employees have the right to select their own collective bargaining agent.

I think that is the law and I think we might as well see that that right is afforded in this case and let the facts decide what the final determination should be.

I have not consulted anyone to serve as Commissioner but I will name former Circuit Judge Joe Eaton to act as Commissioner and that is all I have to say.

Mr. Gramling: Would the Court be so gracious as to add as a part of your order that the employer shall not in any manner coerce or intimidate his employees in such free election or the disposition by threatening that should management lose the election they will all be fired or otherwise discriminated or unlawfully interfering in the free expression of the employees?

The Court: We will make it a mutual restraint so that there be no intimidation or coercion on either side and I think that is necessary and required. There seems to be a good deal of tension and emotion in this matter but I have been encouraged by the fact that there seems to be a possibility of accomplishing something in this case and I haven't seen that in any of the other cases that I have heard about. Maybe I am too much of an optimist.

(Thereupon the hearing was concluded.)

[fol. 137] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 139]

IN THE SUPREME COURT OF FLORIDA

JUNE TERM, A. D. 1955

SPECIAL DIVISION A.

#180677

THOMAS JEFFERSON, INC., a Florida corporation, Appellant,

v.

HOTEL EMPLOYEES UNION, LOCAL 255 (AFL) et al., Appellees.

An Appeal from the Circuit Court for Dade County, William A. Herin, Judge.

Anderson & Nadeau and Patton & Kanner, for Appellant.

Gramling & Gramling, for Appellees.

OPINION—Filed July 27, 1955

PER CURIAM.

This cause came on to be heard on motion by petitioner for supersedeas pending the determination by this court of an appeal taken by it from an interlocutory order of the lower court, which appeal is hereby deemed to be and will be considered as a petition for the writ of certiorari. Section 59.45, Fla. Stat. 1953.

The order brought here for review on certiorari was entered by the lower court in an injunction proceeding brought by petitioner against respondents to enjoin the respondent Union from picketing the San Marino Hotel, owned and operated by petitioner. The issue before the lower court on the complaint and answer filed by the respondent Union was whether the hotel employees had designated the Union as its bargaining agent. The Chancellor heard the testimony on this issue, but found that "there was not enough evidence produced by either side [fol. 140] to determine this easily ascertainable fact." He

thereupon entered an order enjoining picketing by the Union and appointed a Commissioner to hold an election by secret ballot of the employees of petitioner as of June 15, 1955, "to determine the free choice of said employees as to their representation by defendant Union in the matter of labor-management relations . . ." The petitioner filed a "Notice of Appeal" from so much of the decree as provided for the holding of an election among petitioner's employees and applied to the lower court for a stay of that portion of the decree. The lower court granted a stay as to the entire order, including the injunctive portion of the decree, and set the terms of such a bond, but declined to grant supersedeas limited to the portion of the order sought to be reviewed. The application to this court followed.

Rule 19(10) of the Supreme Court Rules authorizes this court to review and overrule, modify or discharge an order of the lower court refusing to grant a supersedeas or stay. We held in *All Florida Surety Company* v. *Coker, etc.*, (1955) 79 So. 2d 762, that

> "The allowance or denial of supersedeas in an appeal from a judgment or decree that is not wholly for the payment of money rests within the sound judicial discretion of the trial court, subject to review by this Court where the order entered on application for stay is deemed to be arbitrary or unreasonable."

Measured by this standard, we think it was error to refuse to grant the relief sought. The petitioner points out that, unless supersedeas is granted, the election will be held and its right to have a decision on the question of whether the decree was erroneous in this respect will become moot and the object of its appeal defeated. Certainly, no sounder reason for the granting of supersedeas can be imagined.

Nor do we think that the trial court was justified in imposing, as a condition to the granting of supersedeas as to the portion of the order appealed from, a requirement that the injunctive portion of the decree also be superseded. [fol. 141] The petitioner was not aggrieved by this portion

of the order, and did not seek a review thereof. Cf. *Lockleer* v. *City of West Palm Beach et al.* (Fla. 1951) 50 So. 2d 348, where the appellant appealed from a final decree holding adversely to his contention that he was entitled to the title of an office and moved the court for an order fixing the terms and conditions of a supersedeas bond. The court granted the motion in part, but declined to supersede that portion of the final decree holding that his opponent was entitled to the office and requiring that he be recognized as such. We held that the trial court had no discretion to limit the appeal to "any one phase or different phases of the order appealed from" and that the supersedeas bond superseded "the decree appealed from in toto." *As applied to the particular facts in that case*, there was no error in so holding—particularly in view of the statement in that opinion that "supersedeas pending the disposition of a cause on appeal is a matter of right . . ." (But see new Supreme Court Rule 19, and the opinion of this court in *All Florida Surety Company* v. *Coker, etc.*, supra, in which we interpreted new Rule 19 as allowing supersedeas *as a matter of right* in only two classes of appealable judgments or decrees: namely, final money judgments or decrees, . . . and certain judgments and decrees in probate and guardianship proceedings and cases involving estates of infants.)

The facts in this case are different. This is not an appeal from a final decree or judgment; the petitioner is seeking review of an interlocutory order in chancery in two parts: (1) a prohibitory injunction against picketing, and (2) a mandatory order to hold an election. These two parts are clearly severable and, in our opinion, it was within the discretionary power of the Chancellor to grant supersedeas as to the mandatory portion of the order and, at the same time, preserve the status quo by allowing the injunctive provision of the order to stand pending the review of the order in this court. See 3 Am. Jur., Appeal and Error, Sec. 558, page 206.

[fol. 142] We are cognizant of the fact that the lower court, in denying petitioner's request for supersedeas limited to the phase of the order brought here for review, stated that he did so for the reason that "the whole order

is bound up together for the one purpose of providing a free determination of what the facts were"; yet we cannot escape the conclusion that the practical effect of the denial was to place petitioner between the proverbial rock and the whirlpool. If it supersedes the entire order, its hotel business will be immediately subjected to the harassment of a picket line; and if, in order to protect its hotel from the picket line, it does not do so, the way will be open for the holding of the election, the legality of which is under attack in this court. An order which places the petitioner on the horns of such a dilemma is, in our opinion, an unreasonable exercise of the judicial discretion reposed in the Chancellor by Rule 19.

Accordingly, supersedeas is granted, staying that part of the order appealed from which provides for the holding of an election and to become effective upon the posting of supersedeas bond in the amount of $5,000, conditioned that such petition for certiorari shall be duly presented to this court within 20 days and to pay all costs, damages and expenses occasioned by reason of the stay of proceedings in event the order or judgment of which a review is sought is not quashed, modified or reversed, the bond to be approved by the Clerk of the Circuit Court of Dade County.

Drew, C.J., Terrell, Thomas and Roberts, J.J., concur.

[fol. 144]

IN THE SUPREME COURT OF FLORIDA

[Title omitted]

PETITION FOR WRIT OF CERTIORARI—Filed August 17, 1955

The petition of Thomas Jefferson, Inc., a Florida corporation, respectfully shows as follows:

1. On June 17, 1955, the petitioner filed a complaint in the Circuit Court of Dade County, Florida against Hotel Employees Union, Local No. 255 (AFL) and others constituting its Director of Organization, Business Officers and agents, and in said complaint the petitioner alleged that the respondents had established a picket line in front

of the hotel owned by the petitioner and described in the complaint, and that the maintenance of said picket line by the respondents constituted an unlawful practice for the reasons more particularly set out in said complaint. Among said reasons was that the respondent union had served upon the petitioner a notice to the effect that it represented a substantial number of the petitioner's employees which was not true and that the respondents had never provided the petitioner with proof that the union represented a majority of the petitioner's employees.

2. Upon an answer being filed to said complaint, the cause was heard by the Court, at the conclusion of which the Court entered an order in which it enjoined the picketing at the petitioner's hotel until the further order of the Court and in which order the Court required the petitioner to make full and complete showing to the Honorable Joe Eaton, the Commissioner named in said order of all the payroll records, which reveal a true and correct list of all of the petitioner's employees as of June 15, 1955, and in which order the Commissioner was required [fol. 145] to cause an election by secret ballot to be held of such of the petitioner's employees who, as of June 15, 1955, came within the jurisdiction of the respondent union, in order to determine the free choice of said employees as to their representation by the respondent union, such ballot to be conducted at such place and time and in such form and manner as to the Commissioner should seem appropriate and reasonable with the expenses to be taxed as part of the costs.

3. The Court was without authority under the pleadings and under the law to order said election to be held. The issue in the case was whether, at the time that the union made a demand upon the petitioner that it be recognized as the collective bargaining agent of the petitioner's employees, such union had been duly and legally designated by such employees as their bargaining agent. The evidence in the case overwhelmingly predominated in favor of the petitioner to the effect that the union did not represent petitioner's employees and having established this fact the court was without further authority to permit the union

to conduct an election at sometime subsequent to the decree to ascertain whether or not the petitioner's employees desired to have such union act as their bargaining agent.

The premises considered the petitioner prays that a Writ of Certiorari issue herein and that so much of said order as require the holding of an election and require the petitioner to give the information specified in the decree to the Commissioner therein named, be quashed.

Anderson & Nadeau, by /s/ Thomas H. Anderson, Attorneys for Petitioner, 908 First National Bank Building, Miami, Florida.

[fol. 146] Certificate of service (omitted in printing).

[fol. 148]

IN THE SUPREME COURT OF FLORIDA

SPECIAL DIVISION B.

CASE NO. 26,880

THOMAS JEFFERSON, INC., a Florida corporation, Petitioner,

v.

HOTEL EMPLOYEES UNION, LOCAL 255 (AFL), DAVID HERMAN, as Director of Organization of said Local, CLARENCE L. SMITH, ALBERT H. BERLIN and HENRY K. MISCHEL, individually and as business officers and agents of said local, Respondents.

A Writ of Certiorari to the Circuit Court for Dade County, William A. Herin, Judge.

Anderson & Nadeau, for Petitioner.

Gramling & Gramling and J. W. Brown, for Respondents.

OPINION—Filed January 13, 1956

Thornal, J.:

Petitioner, which is the owner of a Miami Beach hotel named the San Marino, seeks reversal of a portion of an

interlocutory order of the Chancellor appointing a commissioner to hold an election of hotel employees to ascertain whether respondent Union is the designated bargaining agent of the employees.

This case is another in a series of cases resulting from the picketing of Miami Beach hotels. See Sax Enterprises v. Hotel Employees Union Local No. 255 (A.F. of L.), Fla. 1955, 80 So. 2d 602; Boca Raton Club, Inc. v. Hotel Employees Union, Local No. 255 (A.F. of L.), Fla. 1955, 80 So. 2d 680. Typical of the other cases, petitioner filed its [fol. 149] complaint against the respondents seeking an injunction against picketing activities of the respondents, alleging that the picketing was done for an unlawful purpose, to-wit, to compel non-union employees to join the union and designate it as their bargaining agent in dealing with the employer hotel. Picketing started on June 15, 1955, and this is the crucial date to bear in mind. The Chancellor entered an interlocutory order enjoining picketing at the San Marino Hotel until further order of the court. The whole problem revolves around the factual determination as to whether the respondent union actually in fact represents the employees of the petitioner hotel.

The Chancellor found that he could not determine the existence or non-existence of this fact from the evidence before him and by his order appointed a commissioner "for the sole purpose of ascertaining the foregoing facts [whether the union was the designated bargaining agent of the hotel employees] for the benefit of this Court, within 30 days from the date of this Order [to] cause an election by secret ballot to be held by the employees of plaintiff as of June 15, 1955, who come within the jurisdiction of the defendant Union, to determine the free choice of said employees as to their representation by defendant Union in the matter of labor-management relations; . . ."

By petition for writ of certiorari the Hotel challenges the correctness of that portion of the order appointing a commissioner to hold a secret election. Our examination of the record and exhibits shows that according to petitioner's exhibit 13, the hotel had 29 employees on June 15, 1955, that of these 29 employees, 20 were in the classification served by the respondent union, to-wit, bellmen,

elevator operators, housekeepers, maids, housemen. The Union admits that it does not serve employees such as bookkeepers, typists and management employees. Respondents' Exhibit A consists of 28 so-called "white cards" signed by various individuals designating the respondent Union as its bargaining agent. Exhibit A also includes 20 [fol. 150] so-called "yellow cards" signed by various individuals designating the "Miami Hotel Trades Council," allegedly consisting of affiliates of the American Federation of Labor, as their bargaining agent. A careful comparison of the names appearing on the 48 cards constituting Exhibit A shows that they include only 3 of the names of petitioner's employees who would be served by the respondent Union appearing on plaintiff-petitioner's Exhibit 13.

In our opinion in Sax Enterprises v. Hotel Employees Union Local No. 255 (A.F. of L.), 80 So. 2d 602, we held:

> "Without doubt a labor organization has the right to engage in peaceful picketing of an employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union as the representative of such employer's employees. *In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative,* Treasure, Inc., v. Hotel & Restaurant Employees and Bartender's Union, supra, *and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations.* See North East Texas Motor Lines, Inc., v. Dickson, 148 Tex. 35, 219 S.W. 2d 795." (Emphasis ours.)

In the matter now before us the petitioner who sought the injunction below brought in a list of its employees as of the date the picketing started, identified them according to the nature of their employment and showed that only 3 of them had designated the respondent as their representative. This shifted to the respondent the burden of going forward with the evidence to establish that it was in fact the authorized representative of the employees of

the petitioner in order to justify the respondent in demand-
[fol. 151] ing that the petitioner bargain with it as the labor management representative of the employees. In order to carry this burden the respondents then produced the 48 cards identified as Respondents' Exhibit A and these cards show that only 3 of the employees named by petitioner are affiliated with the respondent Union, according to respondent's own exhibit. Each party doubts the others records but on this appeal neither party has cited to this court any authority for the appointment of a commissioner to hold an extra-legal secret ballot in order to produce evidence for the consideration of the court in a matter pending in litigation before it.

It was the responsibility of the litigants to produce the evidence sufficient to enable the court to arrive at a proper judgment. If there is any doubt about the accurateness or authenticity of the list of employees produced in evidence below by the petitioner as its Exhibit 13, it would have been a very simple matter to have subpoenaed its payroll records and ascertain the facts from the original. The procedure that was followed, to-wit, the appointment of a commissioner to hold a so-called secret election so far as we can determine has no precedent either in labor management litigation or for that matter within the traditional equity procedures heretofore recognized by this or any other court. No precedent has been cited by either party to this appeal. Such procedure obviously deprives both parties of the established right of cross-examination and the confronting of witnesses as well as the compelling of witnesses to testify under oath. If the Chancellor desires further evidence, certainly the rules make available to him appropriate processes for obtaining it either by the compulsion of the appearance of witnesses before him together with the subpoenaing of exhibits or by the reference of the matter to a Master to hear the testimony under oath in the presence of opposing counsel and parties who then have the right of cross-examination. Respondent's claim for the desirability of secrecy to protect the Union members against alleged "black-listing" loses vitality when we note

that respondents themselves have actually filed in this cause membership cards signed by their alleged members. [fol. 152] If facts have occurred since the filing of the complaint which were not included in the original pleadings and which constitute additional grounds either for complaint or as defenses to the complaint, our present rules make adequate provision for an orderly procedure to bring these matters to the attention of the Chancellor. The record in this case at least indicates grounds for suspicion that all parties involved were sparring around in an effort to gain some tactical advantage rather than a straightforward procedural effort to enable the able Chancellor to arrive at the right and truth of the situation that they presented to him by their pleadings. The parties should present their own case and they should not impose upon the Chancellor the burden of presenting it for them.

It appears to us that in the series of cases involving this particular problem which has already been heard by this court on several occasions, the rules governing the presentation and disposition of the litigation have been adequately and clearly set forth and we can frankly find no justification for the continuation of tactics which can only result in delay and ultimate harm to *all parties concerned*, including the public which we judicially know has a vital interest in the Miami Beach hotel industry.

The decree is approved insofar as it provides "picketing at the San Marino Hotel shall be and the same is hereby enjoined until further order of this Court".

In other respects the petition for certiorari is granted, the decree appealed from is quashed, and the cause is remanded for further proceedings consistent with this opinion.

Drew, C.J., Terrell and Roberts, JJ., concur.

Crawford, Associate Justice, heard the oral argument but did not participate in opinion or judgment.

[fol. 154] IN THE SUPREME COURT OF FLORIDA

THOMAS JEFFERSON, INC., a Florida corporation, Petitioner,

v.

HOTEL EMPLOYEES UNION, LOCAL 255 (A. F. of L.) DAVID HERMAN, as Director of Organization of said Local, CLARENCE L. SMITH, ALBERT H. BERLIN and HENRY K. MISCHEL, individually and as business officers and agents of said local, Respondents.

JUDGMENT—January 13, 1956

Counsel for Petitioner having filed in this cause Petition for Writ of Certiorari and having been considered, it is ordered by the Court that said Petition be and the same is hereby granted, the decree appealed from is quashed, and the cause is remanded for further proceedings consistent with this Court's Opinion, this day filed; it is further ordered by the Court that the Petitioner do have and recover of and from the Respondents its costs by it in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared by Mr. Justice Thornal was this day ordered to be filed.

[fol. 155] IN THE SUPREME COURT OF FLORIDA

MANDATE FROM SUPREME COURT OF FLORIDA—
February 1, 1956

To the Honorable, the Judges of the Circuit Court for the Eleventh Judicial Circuit of Florida, Greeting:

Whereas, Lately in the Circuit Court of the Eleventh Judicial Circuit, in and for the County of Dade in a cause wherein

Thomas Jefferson, Inc., a Florida corporation, Plaintiff

and

Hotel Employees Union, Local 255 (AFL), David Herman as director of organization of said Local, Clarence L. Smith, et al, were Defendants

(Circuit Court #180677—Chancery)

the Order of said Circuit Court was rendered July 11, 1955 as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

And Whereas, at the January Term of said Supreme Court holden at Tallahassee, A.D. 1956, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 13th day of January A.D. 1956 the said Supreme Court rendered its opinion and judgment in said cause as per copy thereof hereto attached and made a part hereof.

In Consideration Whereof, It Is Ordered by the Court that the Petitioner do have and recover of and from the Respondents costs in this behalf expended herein taxed at Twelve Dollars, and that all other costs shall be taxed in the court in which the appeal was entered, therefore,

You Are Hereby Commanded, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Order of the Circuit Court notwithstanding.

Witness, The Honorable E. Harris Drew, Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 1st day of February 1956.

(Signature Illegible)
Clerk Supreme Court of Florida

[Seal]

Filed this 3rd day of Feb. A.D. 1956
and recorded this 6 day of Feb. A.D. 1956
in Chancery Order Book 1223 Page 293

E. B. Leatherman
Clerk Circuit Court

By /s/ G. Boyer, Deputy

[fol. 156]

In the Circuit Court of the 11th Judicial Circuit
In and for Dade County, Florida

In Chancery No. 180,677-E

Thomas Jefferson, Inc., a Florida corporation, Plaintiff,

v.

Hotel Employees Union, Local No. 255
(A. F. of L.), et al., Defendants.

Stipulation Re Final Hearing—February 23, 1956

It Is Stipulated by and between counsel for the respective parties that all testimony and other evidence heretofore introduced in this cause be and the same is hereby reaffirmed for the purpose of final hearing and that the Chancellor enter Final Decree upon the record as now made in the light of this Stipulation.

Witness our hands at Miami, Dade County, Florida this 23rd day of February, A. D. 1956.

Anderson & Nadeau, Attorneys for Plaintiff.
/s/ Herbert L. Nadeau.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, /s/ Carrington Gramling.

[fol. 157] CLERK'S NOTE:

Plaintiff's Exhibits 1 to 13, inclusive and Defendant's Exhibits "A", and "B" and "C" do not appear in this record.

[fol. 158]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,677-E

THOMAS JEFFERSON, INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255
(A. F. of L.), et al., Defendants.

FINAL DECREE—February 27, 1956

This Cause coming on to be heard on final hearing pursuant to the stipulation of the parties to this cause and the Court being fully advised in the premise, it is

Ordered, Adjudged and Decreed that the Motion To Dismiss for lack of jurisdiction urged by the Defendant in its Supplemental Answer alleging that Plaintiff is engaged in interstate commeree be and the same is hereby stricken together with that portion of the affidavit of Dave Herman in support thereof.

It Is Further Ordered, Adjudged and Decreed that the Temporary Restraining Order heretofore entered be and the same is hereby made permanent.

Done and Ordered in Chambers, at Miami, Florida this 27th day of February, A. D., 1956.

/s/ William A. Herin, Circuit Judge.

[fol. 159]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,677-E

[Title omitted]

NOTICE OF APPEAL—Filed February 28, 1956

The defendants, Hotel Employees Union, Local No. 255, et al., take and enter their appeal to the Supreme Court of Florida to review the order, judgment or decree of the Circuit Court for Dade County, bearing date the 27 day of February, 1956, entered in the above styled cause and recorded in the records of said Court in Book 1226, Page 299, and all parties to said cause are called upon to take notice of the entry of this appeal.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By /s/ Carrington Gamling.

[fol. 160]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,677-E

THOMAS JEFFERSON, INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255
(A. F. of L.), et al., Defendants.

ASSIGNMENTS OF ERROR—February 28, 1956

Come Now the defendants by their undersigned solicitors and make the following assignments of error as the errors which they intend to rely upon in the Supreme Court of Florida, for a reversal of the Order (or Final Decree) made herein on the 27th day of February, 1956, and recorded in Chancery Order Book 1226 at page 299 of the records of this Court, from which they have appealed:

1. The Court erred in enjoining the defendants in peaceful picketing the business place of the complainants, where-

by your defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly, and the right to work or refrain from working as guaranteed within the meaning and scope of Sections I, XII, XIII, XVII, and XIX, Declaration of Rights, Constitution of the State of Florida, and Amendments I, V, XIII and XIV of the Constitution of the United States of America.

[fol. 161] 2. The Court erred (in and by such final decree) in finding that the defendants should have established to the satisfaction of the employer, that the employees had chosen defendant Union as their representative and further requiring that the labor organization must also inform the employer of the object to be accomplished by picketing and afford an unwilling or hostile employer an unspecified waiting period within which to engage in negotiations, all as a prerequisite to the right to strike and picket, whereby your defendants and the Union members became disenfranchised from the exercise of their constitutional guarantee of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments I, V, XIII and XIV of the Constitution of the United States of America.

3. The Court erred (in an virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article I, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

5. The Court erred (in and by such final decree) in enjoining peaceful picketing and the dissemination of information predicated upon an unsubstantiated finding of fact, thereby depriving the members of this Union the

guarantees of Amendments I and XIV of the Constitution of the United States.

[fol. 162] 6. The Court erred in requiring a direct employer-employee relationship as a prerequisite to picketing and as a prerequisite to publicizing the existence of a labor dispute, contrary to Amendments I and XIV of the Constitution of the United States of America.

7. The Court erred (in and by such final decree) in permanently enjoining peaceful picketing and the publicizing of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefor, and beyond the scope of any finding of fact, unsubstantiated or otherwise, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

8. The Court erred (in and by such Final Decree) in ignoring the undisputed evidence that Defendants had offered to prove representation of plaintiffs' employees and submitted to plaintiffs, prior to the picketing, the sworn statement of a certified public accountant as to such representation, together with a statement of the objectives to be accomplished by collective bargaining and in ignoring the co-relative duty upon the plaintiffs to accept such proof or at least to make reasonable inquiry as to the accuracy of the aforesaid certificate by the certified public accountant, and thereupon entering the aforesaid injunction, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

9. The Court erred (in and by said final decree) in assessing costs against the defendants.

10. The Court erred (in and by such final decree) in refusing to hold an election of the employees of Plaintiff [fol. 163] and thereby ascertain the truth of Union representation and thereby did deprive the members of Defendant Union of the guarantees of Amendments I and XIV of the Constitution of the United States of America.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, /s/ Carrington Gramling.

[fol. 164]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180,677-E

THOMAS JEFFERSON, INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Defendants.

STIPULATION RE RECORD—February 28, 1956

It Is Stipulated by and between counsel for respective parties that the Record On Appeal shall consist of the transcript of record and transcript of testimony heretofore lodged in the Supreme Court in the certiorari proceedings wherein Thomas Jefferson, Inc. was Petitioner and these Appellants were Respondents together with the following:

Date of Filing	*Kind of Instrument*
February 27, 1956	Stipulation Re Final Hearing
February 27, 1956	Final Decree
February 28, 1956	Notice of Appeal
February 28, 1956	Assignments of Error
February 28, 1956	This Stipulation

Witness our hands at Miami, Florida this 28th day of , 1956.

Anderson & Nadeau, Attorneys for Plaintiff, By /s/ Herbert L. Nadeau.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By /s/ Carrington Gramling.

[fol. 165] Clerk's Certificate to foregoing transcript omitted in printing.

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IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957

DIVISION B

Case No. 28,237

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

THOMAS JEFFERSON, INC., a Florida corporation, Appellee.

An Appeal from the Circuit Court for Dade County, William A. Herin, Judge.

J. W. Brown and Gramling & Gramling, for Appellants.

Anderson & Nadeau, for Appellee.

OPINION, PER CURIAM—Filed March 15, 1957

Affirmed on authority of Fontainebleau Hotel Corp. v. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., opinion filed February 1, 1957.

Terrell, C.J., Hobson, Drew and O'Connell, JJ., Concur.

[fol. 169]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957

DIVISION B

Case No. 28,237

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

THOMAS JEFFERSON, INC., a Florida corporation, Appellee.

JUDGMENT—March 15, 1957

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellees do have and recover of and from the Appellants their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

[fol. 178] Clerk's Certificate to foregoing transcript omitted in printing.

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VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 5

HOTEL EMPLOYEES UNION, LOCAL NO. 255, ET AL., PETITIONERS,

vs.

SAX ENTERPRISES, INC.; LEEVLANS CORPORATION; R. S. LEVY, DANIEL LIFTER AND J. S. LANSBURGH, AS TRUSTEE; ET AL.

No. 6

HOTEL EMPLOYEES UNION, LOCAL NO. 255, ET AL., PETITIONERS,

vs.

HARRY LEVY, ET AL., DOING BUSINESS AS SHERRY FRONTENAC HOTEL, STUYVESANT CORPORATION, ABE ALLENBERG, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 5 PETITION FOR CERTIORARI FILED AUGUST 12, 1957
No. 6 PETITION FOR CERTIORARI FILED AUGUST 12, 1957
CERTIORARI GRANTED DECEMBER 16, 1957

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 5

HOTEL EMPLOYEES UNION, LOCAL NO. 255, ET AL., PETITIONERS,

vs.

SAX ENTERPRISES, INC.; LEEVLANS CORPORATION; R. S. LEVY, DANIEL LIFTER AND J. S. LANSBURGH, AS TRUSTEE; ET AL.

No. 6

HOTEL EMPLOYEES UNION, LOCAL NO. 255, ET AL., PETITIONERS,

vs.

HARRY LEVY, ET AL., DOING BUSINESS AS SHERRY FRONTENAC HOTEL, STUYVESANT CORPORATION, ABE ALLENBERG, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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[fol. A]

IN THE SUPREME COURT OF FLORIDA

Case No. 28,249

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

HARRY LEVY, MARK ALLEN LEVY TRUST, ERWIN J. FRIED, et al., Appellees.

Transcript of Record—Filed April 5, 1956

J. W. Brown and Gramling & Gramling, 226 Shoreland Building, Miami, Florida, Attorneys for Appellants.

Sibley & Davis, Thomas H. Barkdull, Jr., 605 Lincoln Road, Miami Beach, Florida, Attorneys for Appellees.

[fol. 1]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 178668-J

HARRY LEVY, MARK ALLEN LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURGH, Trustee, MORRIS LANSBURGH CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER and SALLY KRONE, HARRY A. LEVY Irrevocable Trust, MINNIE GINSBERG, JEROME GRANGER, doing business as the SHERRY FRONTENAC HOTEL, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

COMPLAINT FOR INJUNCTION AND OTHER RELIEF—Filed April 18, 1955

The plaintiffs, Harry Levy, Mark Allen Levy Trust, Erwin J. Fried, General Operating Co., Alex T. Spare, Morris Lansburg, Trustee, Morris Lansburgh Co., James Paulen, Alvin C. Richter, Albert Green, Chester and Sally Krone, Harry A. Levy, Irrevocable Trust, Minnie Ginsberg, Jerome Granger, doing business as the Sherry Frontenac Hotel, file this their complaint for injunction and other relief against the defendants, Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, and allege:

[fol. 2] 1. The individual plaintiffs are a duly created partnership operating under the name of Sherry Frontenac Hotel. The defendant, Hotel Employees Union, Local No. 255 (A. F. of L.), is a labor organization within the intent and purview of the laws of the State of Florida, and the defendants, Albert H. Berlin, Clarence L. Smith and Henry Mischel, are each residents of Dade County, Florida, and are each over the age of twenty-one years; that said individual defendants, and each of them, are the duly authorized business agents and officers of said labor organization.

2. The plaintiffs are the operators of the Sherry Frontenac Hotel, which is an ocean-front hotel consisting of approximately 258 rooms, located at 6565 Collins Avenue, Miami Beach, Florida. This hotel has a reasonable value and worth of approximately Four Million Dollars ($4,000,000.00). Said hotel has been in operation for approximately six (6) years and the plaintiffs operate in connection therewith a cocktail lounge, dining room, swimming pool, cabanas and other various facilities usual and necessary in the operation of a first-class hotel. The plaintiffs' hotel has enjoyed for many years the finest reputation and has earned an excellent and valuable good will and is nationally known and recognized as one of the leading hotels of Miami Beach. The plaintiffs' hotel business has become lucrative. It caters to the public by maintaining a dignified atmosphere, serving only the highest grades of foods and beverages,

and by rendering superlative service to its patrons and guests.

3. Employed at the plaintiffs' hotel are approximately 290 persons who perform services as cooks, waiters, bell boys, maids, elevator operators, and other similar duties normally required to operate and maintain a first-class [fol. 3] hotel. The plaintiffs have had no labor dispute with their employees with regard to wages, working conditions or any other phase of employer-employee labor relationship existing between the plaintiffs and their employees. The plaintiffs have enjoyed the most cordial labor relations with their employees, and have at all times afforded to their employees a satisfactory standard of pay and working conditions. The plaintiffs have received no complaints from their employees with reference to their wages, hours, or working conditions, and are wholly unaware of any labor dispute of any nature, character or description existing between them and their employees.

4. The plaintiffs believe and are informed that sometime early in 1955, one or two carpet-bagger labor organizers arrived in Miami Beach with the announced intention of stirring up labor discord between employers and employees at several of the hotels on Miami Beach, with the purpose in mind of creating for themselves, a lucrative labor organization by which said carpet-bagger organizers could reap a harvest of money from the employees of the hotels on Miami Beach through dues which the said organizers expected to charge said employees in the event they could inveigle said employees to join with said organizers in creating a labor union. These northern organizers announced that they intended to form a labor organization, and they have named their alleged organization, Hotel Employees Union, Local No. 255, A. F. of L. Said union had no members except the two professionals who arrived with the announcement that they constituted said labor organization.

Since said time, the two organizers, one of whom is David Herman, and the other is one of the defendants, Albert H. Berlin, have utilized all the pressure tactics known to labor organizers to force and intimidate the

employees of the plaintiffs to become members of said labor organization. Their efforts in enlisting membership [fol. 4] has been a distinct failure, so the said professionals determined to place pressure, intimidation and threats upon the hotel owners, in order to force said hotel owners through economic sanctions, to sign contracts with the said alleged organization, and thus use said contracts as a basis to force the employees of the hotels to become members of said alleged union.

To this end, said David Herman contacted Saul Cohen, president of the Miami Beach Hotel Owners Association, and demanded that the said Cohen negotiate with and line up all of the owners of the first-class ocean-front hotels on Miami Beach, to execute labor contracts with the said alleged union, thus recognizing said union as representing the employees of the said hotels, and in this fashion, to enable the said union to procure membership among the employees of said hotels. Said Herman threatened Mr. Cohen by stating that unless the Hotel Association actively enlisted the hotel owners to join with the said union by giving it contracts as aforesaid, that the said David Herman would, through economic sanction such as picket lines around said hotels, cause them great economic loss, and thus force them, through such economic loss and pressure, to give to the said union contracts covering the employees in said hotels, who were not, in fact, members of or represented by the said alleged union in any fashio (sic) whatsoever. The Miami Beach Hotel Owners Association, and its president, had no power or authority to represent the owners of the individual hotels in reference to any labor matters involving the owners of any particular hotel.

5. The plaintiffs have had no dealers whatsoever with any members of the Hotel Employees Union, Local No. 255, A. F. of L. Said union has never sought to negotiate with [fol. 5] the plaintiffs as a representative of plaintiffs' employees; in fact, said union does not represent the vast majority of the plaintiffs' employees. No labor controversy or negotiations with reference to any labor dispute has ever been instituted, inaugurated, or carried on between the plaintiffs and the said alleged union, and the said union has never sought to bargain with the plaintiffs as

the alleged representative of plaintiffs' employees, and plaintiffs allege that the said union has never been authorized by the vast majority of their employees to represent them.

6. The plaintiffs have never refused to recognize the defendant union, and have never refused to negotiate with said union; the plaintiffs have never been requested by said union to negotiate with it and have never been advised by the said union that the union is the bargaining agent for plaintiff's employees, nor have the plaintiffs been advised by the said union that it is the labor organization representing plaintiffs' employees, save and except that on Saturday afternoon, April 16, 1955, at approximately 3:30 P.M., Morris Lansburgh received a phone call from one purposting (sic) to be the aforementioned David Herman at the Sans Souci Hotel, Miami Beach, Florida, at which time the said Lansburgh was advised by the one identifying himself as Herman that it was up to him, Lansburgh, to determine whether his employees would walk out or remain on the job at his hotels, the Sans Souci or the aforementioned Sherry Frontenac, the said Lansburgh, having an interest in the Sans Souci. The caller implied that if the two aforementioned hotels would recognize the defendant union, there would be no walk out. The said Lansburgh advised the party calling that any decision of such a character could not solely be his, as there were many other parties interested in both of the aforementioned [fol. 6] hotels as principals, many of whom resided outside of the State of Florida. The said Lansburgh gave to the caller the name and telephone number of one of the principals involved. The caller demanded a decision by 3:45 P.M. on the same afternoon. The said Lansburgh advised the caller that it would be impossible to contact all interested parties within such short notice.

In truth and in fact, no demand or grievance of any nature, character or description whatsoever of the plaintiffs' employees has, up to the present time, been made of or placed before the plaintiffs, its officers or agents. Notwithstanding, said defendant union, at 3:50 o'clock in the afternoon, on Saturday, April 16, 1955, placed a picket line consisting of six (6) or more pickets at the plaintiffs' hotel

and place of business, and said pickets have seized and are occupying the property and premises of the plaintiffs unlawfully, and contrary to the laws of the State of Florida. And each of said pickets in said picket line carries and displays placards and posters which falsely and fraudulently allege that the plaintiffs have refused to negotiate with the defendant union. Each of said placards carries the following statement:

> "This hotel refused to negotiate with Hotel Employees Union, Local #255, American Federation of Labor, 1575 Washington Avenue, Miami Beach".

Such representations made by said union are false and untrue and the said union well knows that the said statements are false and untrue. Said statements are made for the purpose of deceiving the public. The picket line was placed around the plaintiffs' Place of business for an unlawful and illegal purpose in that the defendant union is carrying out its threat made to the President of the Miami Beach Hotel Owners Association by placing economic pressure on the plaintiffs, thereby seeking to cause the plain- [fol. 7] tiffs, by loss of revenue thus occasioned, to execute a labor contract with the said union. This conduct of the said defendant union is unlawful and is contrary to the Constitution and the laws of the State of Florida, in that the said defendant union has never been certified to the plaintiffs as the lawful bargaining agent of the plaintiffs' employees, and said union has never approached the plaintiffs seeding (sic) to bargain with the plaintiffs as the authorized bargaining agent of the plaintiffs' employees, and in that no demand for collective bargaining has ever been made by said union upon the plaintiffs. Thus, the defendant union, through its unlawful conduct, seeks to force the plaintiffs to execute a contract with it in order that said union might utilize such contract to coerce and force plaintiffs' employees to become members of said union.

7. The defendants called a meeting of employees of the plaintiffs' hotel, but at said meeting defendants were unable to procure the presence of a majority of plaintiffs'

employees. Notwithstanding this fact, the defendants urged some of plaintiffs' employees to strike, walk out, and cease work at the plaintiffs' place of business, and at said meeting, enlisted an agreement from a small minority of plain-
[fol. 8] tiffs' employees to strike and cease work. This conduct, on the part of the defendants, was unlawful and directly in conflict with the provisions of Paragraph 3, §447.09, Florida Statutes, in that the agreement to strike and cease work was not authorized by a majority vote of the plaintiffs' employees to be governed thereby, and there was no election by secret ballot, as required by Paragraph 4 of §447.09, Florida Statutes.

8. On the afternoon of April 16, 1955, the defendants and their henchmen, congregated at plaintiffs' place of business in large numbers, and as a majority of plaintiffs loyal employees arrived for work, each was accosted by the troup (sic) and urged to join the defendants' strike movement. Some of the employees were threatened if they did not cease to work, and many of them were intimidated by the defendants and their associates, agents and servants. As a matter of fact, the pickets have used physical force and violence upon some of the employees who returned to work, and a number of employees have received innumerable anonymous telephone calls of threats of all manner of bodily harm and injury to their person, should they return to the plaintiffs' place of business. Most of the plaintiffs' employees who refused to attend work on April 16th did so because of coercion and intimidation inflicted upon them by the defendants, and the large number of persons defendants had gathered at the entrance to the plaintiffs' place of business, in an effort to discourage and threaten plaintiffs' employees as they arrived. All of this was unlawful and contrary to the provisions of Paragraph 11 of §447.09, Florida Statutes.

9. The defendant union is maintaining the picket line around the premises owned and operated by the plaintiffs, and said picketing is unlawful and in violation of Paragraph 13, §447.09, Florida Statutes, in that said union
[fol. 9] maintains more than six pickets in the space surrounding the plaintiffs' place of business. Said pickets have

not engaged in peaceful or reasonable picketing, and the same has become unlawful in that the pickets maintaining the picket line are attempting to stop patrons of plaintiffs' hotel from entering or leaving the premises, and are using abusive and obscene language, and are harassing and threatening the plaintiffs' patrons and guests.

10. The picket banners carried by said pickets make false, unlawful, and fraudulent statements, in that said banners charge the plaintiffs with refusing to negotiate with the defendant union, although the said union knows the statements to be untrue and false. Thus the said union, through false and misleading picket banners, attempts to induce guests and patrons of the plaintiffs' hotel to leave, and through such fraudulent misrepresentations, defendants seek to destroy the plaintiffs' business and injure the plaintiffs in the operation of their business. By reason of the unlawful conduct on the part of the defendants, members of the public are being deterred and stopped from patronizing the plaintiffs' place of business, which is causing plaintiffs irreparable loss and damage. There is no method or means by which the exact loss may be determined and there is no method or means of determining the full damage caused by such false and fraudulent conduct of the said defendant union.

11. The Sherry Frontenac Hotel operates for the benefit of its patrons and guests a parking lot immediately west and across Collins Avenue from the entrance to said hotel; said parking lot being located on Lots 22 through 26 of Block 7, Second Ocean Front Subdivision, according to the plat thereof, recorded in the Public Records of Dade County, Florida. That at approximately 4:20 P.M., Saturday afternoon, April 16, 1955, Morris Lansburgh, one of the owners of the aforementioned hotel, and Jack Paul, the resident manager of the hotel, heard and observed a disturbance being created in the aforementioned parking [fol. 10] lot and in an effort to quiet same, as the commotion and disturbance was of such a degree that it was disturbing the patrons of the hotel and the peace of the community, the said Lansburgh and Paul went over to the aforementioned parking lot and found there a person whom

it was later learned, was one Henri Michel, who was screaming, yelling, using profanity and generally creating a disturbance and a nuisance. The said Michel holds himself out as an organizer of the defendant union. The said Lansburgh and Paul requested the said Michel to quiet down and leave the premises; whereupon, the said Michel refused to lower his voice, or leave the premises, and dared the parties to have him removed. At such time there were members of the Miami Beach Police force present who advised the said Michel that he could be arrested for trespassing on the property of the plaintiffs, but the said Michel refused to leave; whereupon, the resident manager of the Sherry Frontenac requested the officer to remove the said Michel and the said Michel, the police officer and Mr. Paul journeyed to the Miami Beach Police Station where a complaint was sworn out against the said Michel for trespassing on private property. This disturbance, as aforesaid, created a great commotion and attracted a large crowd. Michel and his cohorts intimidated the patrons and guests of the hotel when they attempted to remove their automobiles and such actions on the part of the representatives of the defendant union are contrary to the laws of this State and were done for the express and open purposes of intimidating and threatening all those who attempted to enter the private parking lot of the plaintiffs' hotel.

12. The defendant union and its representatives, threw up its picket line without notice or opportunity for the plaintiffs to present their cause to the court to determine the right of the union to cause plaintiffs the damage they are presently suffering. The plaintiffs are entitled to restoration of status quo ante by temporary injunction until such time as the court may have the opportunity to declare [fol. 11] and determine whether or not the defendant union is entitled to engage upon the conduct which is aimed at destroying the plaintiffs' business and utilizing in furtherance thereof the unlawful means aforesaid.

Forasmuch, Therefore, as plaintiffs are without remedy in the premises, save and except in a Court of Equity, and to the end that justice may be done, plaintiffs pray:

(a) That this Court temporarily enjoin and restrain the defendant union forthwith from maintaining said pickets or picket line at the plaintiffs' place of business, and that the Court restore to plaintiffs their status quo ante, pending a determination of the right of the defendant union to picket the plaintiffs' business.

(b) That this Court temporarily enjoin and restrain the defendant union, and its agents, officers, representatives, servants and employees, including the defendants, Albert H. Berlin, Clarence L. Smith and Henry Mischel, from picketing or causing to be picketed or aiding and abetting in the picketing or authorizing the picketing of plaintiff's place of business, or of advertising or publishing any false and scandalous statements in reference to the plaintiffs' business, or their officers, agents, representatives and employees, or by any act or method of boycotting or injuring the same, either by picketing or otherwise.

(c) That this Court make such injunctions permanent upon final hearing.

(d) That this Court grant such other and further relief as to it may seem meet and proper.

Sherry Fontenac (sic) Hotel, By Morris Lansburgh.

[fol. 12] *Duly sworn to by Morris Lansburgh, jurat omitted in printing.*

[fol. 13]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

AMENDMENT TO BILL OF COMPLAINT FOR INJUNCTION AND OTHER RELIEF—Filed April 27, 1955

Comes Now the Plaintiffs, Harry Levy, et al., doing business as the Sherry Frontenac Hotel, by its undersigned attorneys, and files this, its Amendment to its Bill of Complaint for Injunction and Other Relief against the Defendants, as a matter of course before a responsive pleading has been served, by adding thereto Paragraph XIII:

XIII.

The picketing being conducted by the union is unlawful in that said picketing is being conducted in a violent and unreasonable manner. On more than one occasion, the pickets have abused the guests and employees of the Plaintiff's hotel with obscene language, threats and vile names. On many occasions, employees coming to and from their work at the hotel owned by the Plaintiff and at other times have been intimidated and threatened with bodily harm and injury in the event that they continued to work at the hotel. Telephone operators employed in the hotel have been harrassed (sic), threatened, abused, and subjected, over the telephone, to threats of violence and obscenity by supporters of the union. Physical violence has been afflicted upon several of the employees working at the Plaintiff's hotel by members of the defendant union. These occurances (sic) have resulted in wide-spread terror, fear, and intimidation among the employees working at the hotel owned by the plaintiff. The defendant union has continued to intimidate employees of the plaintiff to the point where many of them have stayed away from their work because of fear even though they desired to continue active employment at the plaintiff's hotel.

[fol. 14] As a part of its plan to terrorize and intimidate the employees of the plaintiff into staying away from their work, members of the defendant union have taken down the numbers of the license plates of the employees' cars, and have taken still photographs and moving pictures of employees in the hotels entering, leaving, and during their working hours.

The picketing being conducted by the union is unlawful in that the defendants have represented said picketing as being the result of a strike.

Morris Lansburgh

Duly sworn to by Morris Lansburgh, jurat omitted in printing.

[fol. 15]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

ORDER DENYING PLAINTIFF'S APPLICATION FOR TEMPORARY INJUNCTIVE RELIEF—Entered May 11, 1955

This Cause came on regularly for hearing upon the plaintiff's application for temporary injunctive relief in accordance with the prayers of the verified complaint as amended. The Court has heard and considered the testimony adduced on behalf of the plaintiff, has read and considered the evidenciary (sic) exhibits of the plaintiff, and has heard and considered arguments of counsel for the respective parties. In consideration thereof, the Court is of the opinion and finds that the plaintiff has not made a sufficient showing for injunctive relief on the basis of the manner of the picketing and the method in which it is being conducted.

It Is Accordingly, Ordered, Adjudged and Decreed that the plaintiff's application for a temporary injunction be and it is hereby denied, without prejudice; and

It Is Further Ordered that, the defendants not having filed answers or other pleadings to the complaint, the allegation or contention made by the plaintiff that the picketing is conducted for an unlawful or illegal purpose is not considered nor passed upon, but determination of this question is reserved until final hearing.

Done and Ordered in Chambers, at Miami, Florida, this 11th day of May, 1955.

Robert L. Floyd, Circuit Judge.

[fol. 17]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

In Chancery No. 178668

HARRY LEVY, MARK ALLEN LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURGH CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER and SALLY KRONE, HARRY A. LEVY—Irrevocable Trust, MINNIE GINSBERG, JEROME GRANGER, doing business as the SHERRY FRONTENAC HOTEL, Petitioners,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

ANSWER—Filed May 9, 1955

Come Now the defendants and make this their Answer to the complaint and answering, say:

1. They admit the identity of the parties hereto as alleged in Paragraph 1.

2. They are without knowledge as to the matters and things as set forth in Paragraph 2, but aver that if the said hotel enjoys a fine reputation and valuable good will that [fol. 18] such asset has been created in large measure by the excellence of performance by the many employees of said hotel while said employees are yet not recognized by the plaintiffs through their duly designated representative of their own choosing, to-wit: Hotel Employees' Union Local No. 255; and that the purpose of this instant litigation is to deprive the said employees who have contributed so richly to the success of plaintiff hotel of their constitutional and statutory guarantees of being represented for collective bargaining purposes by representatives of their own choosing.

3. Defendants admit that the said hotel employs many people as cooks, waiters, bell boys, maids, elevator operators and other similar duties normally required to operate and maintain a hotel, but deny the remaining allegations of Paragraph 3 of the complaint and aver that the employees of plaintiffs' hotel have long been dissatisfied with their wages, working conditions and the other phases of the employer-employee labor relationship and aver that plaintiff has suffered a large turnover in the employees, because of the sub-standard rate of pay, working conditions, adjustment of grievances and other inter-related factors; and would aver that the many complaints on the part of the employees have been properly brought to the representatives of their own choosing as guaranteed by law, to-wit: Hotel Employees' Union Local 255, A. F. of L; but that plaintiff hotel has at all times refused to negotiate [fol. 19] or settle the many differences and grievances existing and under which the employees are now suffering.

4. Your defendants, not waiving their Motion to Strike Paragraph 4 of the complaint, would show that the individual officers of this union names in the complaint have been bona fide residents of this jurisdiction for many years respectively, to-wit:

Al Berlin	thirty-two years
Clarence L. Smith	eighteen years
Harry Mischel	eighteen years

and are local home owners, maintaining their families as an integral part of Dade County, Florida, and that the said union was chartered by its International Union March 1, 1954 with a membership at that time of approximately thirteen hundred members; and that the said union has a present membership of approximately five thousand members that because of the tactics of the plaintiff employers and other employers in the Community, acting in concert with the plaintiff in this cause, the employees of this plaintiff were denied representation in labor matters by agents of their own choosing and their wages were held far below existing standards in communities of similar size and nature; that hours per week are longer and more arduous than prevail in all similar establishments in other com-

munities; that no machinery is tolerated by plaintiff employer for adjustment of bona fide grievances and that the employees of plaintiff generally were oppressed and [fol. 20] militated against to such extreme that their anguished cries were heard in Cincinnati, Ohio, whereby and whereupon the Hotel and Restaurant employees and Bartenders International Union, consistent with its gracious objectives, did lend aid, comfort and support to the oppressed employees by lending them the services of said Dave Herman for the purpose of appealing to plaintiffs and their respective consciences, if any, in the hope that those employees may be liberated from the economic bondage in which they are currently unmercifully shackled.

5. Your defendants deny that they have never sought to negotiate with the plaintiff as the representative of plaintiff's employees and aver that Local 255 represents the vast majority of plaintiff's employees. Defendants admit that plaintiff has had no dealings whatever with any members of defendants' organizations, but aver that the plaintiffs have failed and refused to have any dealings whatsoever with members of the Hotel Employees Union Local No. 255 A. F. of L., as a result of refusal to recognize the constitutional and statutory guarantees of the many employees in the matter of self-organization and collective bargaining; and your defendants deny each and every of the remaining allegations of the said Paragraph 5.

6. These defendants answering Paragraph 6 deny that the plaintiffs have never refused to recognize the defendant union and aver to the contrary that the very existence of this litigation and of the picketing line complained of in Paragraph 6, conclusively establishes that there has been [fol. 21] recognition of the bargaining agent or the labor representative of the employees and in making answer to Paragraph 6, would repectfully (sic) direct the attention of the court to plaintiff's own words in the first sentence of Paragraph 5 of the complaint, to-wit: "The plaintiffs have had no dealings whatever with any members", etc., and your defendants aver that the cause of the picketing complained of in Paragraph 6 is admitted by plaintiff in the aforequoted opening words of Paragraph 5; and these

defendants deny that they are picketing to require the plaintiff hotel to execute a labor contract and aver that no proposed labor contract has been submitted to plaintiffs, for that plaintiffs have failed and refused to recognize the union or to in any manner negotiate or to consent to negotiate in the matter of a labor contract whatsoever; and these defendants deny that they seek to force the plaintiff to execute a contract in order to coerce and force plaintiff's employees to become members of said Union for that this union undertakes to represent only such employees as have duly designated this union as the representative of their own choosing, as provided for in FSA 447.03.

Your defendants admit the picketing but aver that the picketing is for the purpose of appealing to the friends and sympathizers of these defendants and its members and is an exercise of the freedom of speech as guaranteed to these defendants and the members of the defendant union, [fol. 22] as set forth in Chapter 447.13 Laws of Florida.

7. Your defendants deny each and every of the material allegations of Paragraph 7, and deny that any meeting was had for the purpose of conducting a strike ballot, or that any strike ballot was had, secret or otherwise, and that no action was taken whatsoever as would come within the scope of FSA 447.09 as alleged in the complaint.

8. Defendants deny each and every of the material allegations of Paragraph 8 as fully and completed as though each were herein set forth and severally categorically denied.

9. Defendants deny each and every of the material allegations of Paragraph 9 as fully and completed as though each were herein set forth and severally categorically denied.

10. Defendant (sic) deny each and every of the material allegations of Paragraph 10 as fully and completely as though each were herein set forth and severally categorically denied; and

On information and belief, your defendants aver that members of the public are being deterred and stopped from

patronzing (sic) the plaintiff hotel, but would aver that if such is the case it is only because friends and sympathizers of oppressed working people have determined to withhold their patronage from a place of business that refuses to negotiate with the bona fide representative of the employees of plaintiff hotel, contrary to the established [fol. 23] American way of life and contrary to the spirit and intent of the public policy of the great United States of America, as expressed in the several pertinent Congressional Acts on said subject as well as enunciations of the Supreme Court of the United States of America and contrary to the policy of the State of Florida as enunciated in Article 12 Declaration of Rights, Constitution of Florida and FSA 447.01 (1) and 447.03, but your defendants aver that plaintiffs are bound by their several respective utterances and releases to the Press, wherein they aver in effect that they are experiencing "business as usual".

11. Defendants deny each and every of the material allegations of Paragraphs 11, 12 as fully and completely as though each were herein set forth and severally categorically denied.

AFFIRMATIVE ANSWER

Your defendants, having made full, true and complete answer to the complaint, would make their affirmative answer as follows: Your defendants aver each and every of the allegations of the foregoing answer as though herein at this point repeated and aver in addition thereto that the plaintiffs seek to maintain this litigation in a court of equity and good conscience with unclean hands, for that the plaintiff has denied to its many employees the statutory and constitutional guarantees of representation and collective bargaining as afore set forth and are endeavoring to frustrate and to bring to naught the provisions of the [fol. 24] aforesaid statutory Constitutional clauses and enactments, contrary to equity and good conscience.

That your defendant union as the spokesman and representative of its members who are employed by plaintiff, has long sought to bring about negotiations and the plaintiff has failed and refused to respond to the invitations

and solicitations of this defendant union, acting on behalf of its members and that the picketing became necessary in order to appeal to the friends and sympathizers of the members of defendant union who are employed by plaintiff, in an endeavor to cause plaintiffs to recognize your defendant union as a lawfully constituted bargaining agent, as aforesaid; that in the utmost of good faith, your defendant union has invited plaintiffs to hold an election by secret ballot under any fair and impartial authority and by such secret ballot, demonstrate to plaintiff the bona fides of defendant union's assertion concerning majority representation.

The plaintiff seeks to deprive these defendants and the members of defendant's union of the constitutional guarantee of freedom of speech, as provided for in Article 1 and XIV Bill of Rights, Constitution of the United States of America and the similar provisions of the Declaration of Rights of the Constitution of the State of Florida and the Guarantee of Chapter 447.13 Laws of the State of Florida.

Wherefore, your defendant union prays this Honorable Court for the appointment of a Commissioner to hold an election and ascertain and report to this Honorable Court [fol. 25] the truth and accuracy of the foregoing statement as to majority representation by the said Union and that this Honorable Court enter its Declaratory Decree declaring this Union to be in fact the duly authorized representative of the majority of plaintiff's "service" employees and that upon judicial ascertainment and Declaratory Decree, that this Honorable Court by its mandatory injunction, require the plaintiff to negotiate and bargain in good faith with this Union on behalf of the members of the Union, who are the employees of plaintiff, as is contemplated by Chapter 447 of the Laws of the State of Florida, together with Section 12 of the Bill of Rights, Constitution of the State of Florida and to deny the relief sought in the original complaint.

Fuller Warren; Warren, Klein & Moore; Gramling & Gramling; J. W. Brown; By /s/ J. Carrington Gramling, Solicitors for Defendants, 224 Shoreland Building, Miami, Florida.

[fol. 26]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

In Chancery No. 178668

HARRY LEVY, MARK ALLEN LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURGH, Trustee, MORRIS LANSBURGH CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER and SALLY KRONE, HARRY A. LEVY—Irrevocable Trust, MINNIE GINSBERG, JEROME GRANGER, doing business as the SHERRY FRONTENAC HOTEL, Petitioners,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

ANSWER TO AMENDMENT OF BILL OF COMPLAINT—
Filed May 9, 1955

Come now defendants and deny each and every of the material allegations of the Amendment to Bill of Complaint, as fully and completely as though each such averment was herein set forth and each severally categorically denied.

Fuller Warren; Warren, Klein & Moore; Gramling & Gramling; J. W. Brown; By /s/ J. Carrington Gramling, Solicitors for Defendants, 224 Shoreland Building, Miami, Florida.

[fol. 27]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

In Chancery No. 178668

HARRY LEVY, MARK ALLEN LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURGH CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER and SALLY KRONE, HENRY A. LEVY—Irrevocable Trust, MINNIE GINSBERG, JEROME GRANGER, doing business as the SHERRY FRONTENAC HOTEL, Petitioners,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

SUPPLEMENTAL ANSWER—Filed May 27, 1955

Come now the defendants and make this their Supplemental Answer and would respectfully show unto this Honorable Court that the allegations of the Complaint and the prayer for relief in said complaint predicated upon such allegations alleging and averring a failure on the part of your defendants to meet the requirements of 447.09 (3 and 4) seek only to deprive your defendants of their constitutional guarantees of freedom of speech and to impose upon the individual members of the defendant Union an involuntary servitude contrary to the provisions of the 1st, 13th and 14th Amendments of the Constitution of the United States of America for that the requirement of a majority vote, by secret ballot of all employees to be affected by a [fol. 28] proposed strike would be a (sic) to abridge and deprive each individual of his constitutional right to speak freely his opinions and to refrain from working, individually or in concert with others contrary to the aforesaid Constitutional provisions; that the said Statute would impose a

prior censorship upon the right to freely express one's own opinions and to refrain from working and to make known the facts of this instant case so as to grant the relief prayed for by the plaintiffs would be to abridge these defendants and the members of the Union of their Constitutional guarantees as aforesaid.

Fuller Warren; Warren, Klein & Moore; Gramling & Gramling; J. W. Brown; By /s/ Carrington Gramling, Solicitors for Defendants, 224 Shoreland Building, Miami, Florida.

Certificate of service (omitted in printing).

[fol. 29]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

IN CHANCERY NO. 178668

[Title omitted]

PRELIMINARY INJUNCTION—June 2, 1955

It appearing that the Supreme Court of Florida, by its opinion and decree rendered on June 1, 1955, granted certiorari as to that part of my order entered in this cause on May 11, 1955, which deferred a ruling upon the question whether or not the picketing conducted by the defendants was being carried on for an unlawful purpose, and remanded this cause with directions to me to enter a temporary restraining order on the present status of the case [fol. 30] without further proceedings.

Accordingly, it is hereby ordered, adjudged and decreed as follows:

1) That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, and all affiliated organizations, be and they each are hereby enjoined and restrained until further order of this Court from picketing or causing to be picketed the Sherry Fron-

tenac Hotel, 6565 Collins Avenue, Miami Beach, Florida, its environs or approaches.

2) That the defendants, and each of them, and their servants, agents, officers, organizers, and employees, or anyone acting in conspiracy with the defendants, and all affiliated organizations, be and they each are hereby enjoined and restrained until further order of this Court from publishing or causing to be published any statements to the effect that a strike, walkout or cessation of work is in effect at the Sherry Frontenac Hotel, or that the plaintiff refuses to negotiate or recognize the defendants or affiliated organizations as a collective bargaining agent of the employees of the Sherry Frontenac Hotel.

3) That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, and all affiliated organizations, be and they each are hereby enjoined and restrained until further order of the Court from carrying or causing to be carried any signs, placards or [fol. 31] propaganda of any nature, kind or description in front of the Sherry Frontenac Hotel, its environs or approaches.

4) That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, and all affiliated organizations, be and they each are hereby enjoined and restrained until further order of the Court from molesting, interfering with, intimidating, coercing or directing any force or violence towards the plaintiff, its officers, servants, agents, employees, representatives, or their property.

5) That the plaintiffs shall file herein an injunction bond payable to the defendants, in the principal amount of Twenty-Five Hundred Dollars ($2,500.00) with good and sufficient surety, to be approved by the Clerk of this Court and conditioned as required by law to pay all costs, damages and expenses which may be suffered by the defendants by reason of the issuing of this injunction, if the injunction

shall be dissolved or if the complaint upon which it was granted be dismissed.

Done and ordered in Chambers at Miami, Florida, this 2nd day of June, 1955.

/s/ Robert L. Floyd, Circuit Judge.

[fol. 32]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

IN CHANCERY NO. 178668

[Title omitted]

MOTION TO VACATE TEMPORARY RESTRAINING ORDER— Filed June 2, 1955

Come now the defendants and move this Honorable Court to vacate the Temporary Restraining Order heretofore entered on May 28, 1955, and as grounds for said motion would respectfully show unto this Honorable Court that the defendants are ready, willing and able to make immediate showing of all matters and things not heretofore considered by the Court and required to be heard by the Supreme Court of Florida in its Opinion of May 27, 1955 in that recent Certiorari wherein Sax Enterprise, Inc., was petitioner and defendants herein were respondents.

[fol. 33] And your defendants pray an immediate hearing thereuon (sic).

Fuller Warren, Gramling & Gramling, J. W. Brown, Solicitors for Defendants, By /s/ J. Carrington Gramling, 224 Shoreland Bldg., Miami, Florida.

Certificate of service (omitted in printing).

[fol. 35]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

IN CHANCERY No. 178,668-J

[Title omitted]

ORDER GRANTING MOTION TO VACATE PRELIMINARY INJUNCTION—June 16, 1955

On April 16, 1955, the defendant union placed a picket line at the Sherry Frontenac Hotel at Miami Beach. The pickets carried placards announcing that "This Hotel refuses to negotiate with Hotel Employees Union Local No. 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach". Simultaneously with the initiation of picketing, a number of the employees at the hotel walked out and abandoned their work. Plaintiffs made application for temporary injunctive relief against the picketing upon [fol. 36] the asserted grounds that the picketing was accompanied by force violence and coercion and that it was conducted for an unlawful purpose.

On May 11, 1955, I denied plaintiffs' application for temporary injunctive relief. I found and adjudicated that the plaintiffs had failed to make a sufficient showing for injunctive relief upon the alleged basis of violence and reserved until final hearing determination of whether or not the picketing was conducted for an unlawful purpose.

The Supreme Court of Florida, on June 1, 1955, granted certiorari as to that part of my order which deferred ruling upon the question of whether or not the picketing was being carried on for an unlawful purpose and remanded the cause with directions to enter a temporary restraining order immediately. And in obedience to the mandate and order of the Supreme Court, I entered a Preliminary Injunction on June 2, 1955. Thereupon the defendants made application to vacate and dissolve such preliminary injunction. I set the motion to vacate for hearing before me on June 4, 1955. I have heard and considered the testimony and evidence and arguments of counsel for the respective parties.

The defendants' motion to vacate the preliminary injunction presents for determination whether the picketing engaged in by the defendants was lawful or unlawful under the law of the case as established by the Supreme Court.

The Supreme Court described the procedural course [fol. 37] which must be adopted and pursued by a labor union before it has the right to engage in peaceful picketing of an employer's premises and predicated upon the refusal of the employer to recognize and negotiate with the union as a representative of such employer's employees. The Court said that "In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative, and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations".

Based upon the testimony and evidence adduced before me, "I find that the Defendant union, through its authorized representatives, did inform the plaintiffs of its desire to engage in negotiations as the bargaining agent of a number of employees at the Sherry Frontenac Hotel within a reasonable time prior to the date on which picketing began. I further find that the union has established that a number of plaintiffs' employees, although less than a majority, had chosen the defendant union as their bargaining agent and that these employees made this choice prior to the date of the appearance of the picket line before the plaintiffs' premises. I further find that the representatives of the defendant union did inform the plaintiff of the object to be accomplished by the picketing prior to April 16, 1955," and that the plaintiffs did evade and stall the representatives of the defendant union to an extent that no reasonable [fol. 38] man could conclude other than that these evasive tactics were for any other purpose than refusing to negotiate. It is apparent from the record in this cause that the course of conduct engaged in by the plaintiffs after the plaintiffs learned of, and were informed about, the defendant union's desire to negotiate was designed to thwart any attempts by the defendant union to be able to point to any concrete evidence that negotiations were, in fact, refused. It was as though a "cat and mouse" game was the

weapon to be used by the plaintiffs with the ultimate hope that the union's representatives would tire of playing and finally look elsewhere for recreation. This, the union refused to do, however, and the picket line was the result. The facts and circumstances in this case are substantially the same as those in Whitehead, et al. v. Miami Laundry Company (Fla.) 36 So. 2d, 382, and Johnson v. White Swan Laundry, Inc. (Fla.) 41 so. 2d, 874.

The only major difference in this case and the Johnson case, supra is that in the latter a "strike vote" of the members of the union who were employees of appellee in that case had been taken pursuant to Chapter 447.09 (3 and 4), Florida Statutes. There is evidence before this Court that on May 25, 1955, the defendant union called a "strike vote" and did set up some form of machinery by which to allow its members to cast their ballot. This Court is of the opinion that the facts and and (sic) circumstances [fol. 39] in this case do not make it necessary to invoke the provisions of Chapter 447.09 (3 and 4) Florida Statutes. This is a suit against the union, not its members who were employees of the plaintiff. Subsequent to the union's call for a picket line, a number of the union members, who were employees of plaintiff, refrained from crossing the picket line established by the union and refused to report for work. These employees were replaced by other permanent employees hired by the plaintiffs. The issue is clear. The purpose for the establishment of a picket line was in the exercise of the union's right of free speech—to proclaim to the world that plaintiffs refused to negotiate with the union's bargaining agent of a number of the employees at plaintiffs' hotel. No evidence of coercion and intimidation by the union against either its own members, who were employees, or against non-union employees of plaintiffs who refused to cross the picket line, has been made to appear.

Were it necessary, however, to decide the constitutionality of Chapter 447.09 (3 and 4), Florida Statutes, I would be constrained to hold the same unconstitutional for the reasons given and on authority of Stapleton v. Mitchell (Kan.) 60 F. Supp. 51, wherein the language of the statute there under consideration was exactly the same as the Florida Statute, supra.

I, therefore, find that the picketing was not conducted for an unlawful purpose and that the plaintiffs have failed, [fol. 40] by competent evidence, to sustain the allegations in its complaint "that the picket line was placed around the plaintiffs' place of business for an unlawful or illegal purpose. . . . " Whitehead, et al., v. Miami Laundry Company, supra; Johnson v. White Swan Laundry, Inc. supra; Moore v. City Dry Cleaners & Laundry, Inc. (Fla.) 41 So. 2d 865; Hotel & Restaurants Employees' & Bartenders' Union Local No. 156, A. F. of L. v. Cothron, et al. (Fla. 59 So. 2d 366.

It is therefore, ordered, adjudged and decreed that defendants' Motion to Vacate the Preliminary Injunction heretofore entered in this cause on the 2nd day of June, 1955, be, and the same is hereby granted, and said Preliminary Injunction be, and the same is hereby vacated.

Done and ordered in Chambers at Miami, Dade County, Florida, this 16th day of June, 1955.

/s/ Robert L. Floyd, Circuit Judge.

[fol. 41]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 178,668

[Title omitted]

ORDER DENYING SUPERSEDEAS—June 18, 1955

This cause came on to be heard upon plaintiffs' motion for order for supersedeas in which plaintiffs seek to supersede the order of the Court entered on June 16, 1955, in which the Court dissolved its injunctive order heretofore entered in this cause, and it appearing to the Court that plaintiffs are about to file a petition for certiorari in the Supreme Court of Florida complaining of s d order of [fol. 42] dissolution and that plaintiffs desi e that said petition shall operate as a supersedeas and seek an order of this Court fixing the amount and conditions of a supersedeas bond and the Court being advised in the premises,

It is thereupon ordered, adjudged and decreed that the said motion be and the same is hereby denied and the said supersedeas is hereby refused.

Done and ordered in Chambers at Miami, Florida, this 18th day of June, 1955.

/s/ Charles A. Carroll, Circuit Judge.

[fol. 55]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1955

SPECIAL DIVISION A.

Case No. 26,197

BOCA RATON CLUB, INC., a Florida corporation and HILDEMART CORPORATION, a Florida corporation, Petitioners,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

Case No. 26,198

SORRENTO HOTEL CORP., a Florida corporation, Petitioner,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

Case No. 26,199

HARRY LEVY, MARK ALLEN LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURGH CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER and SALLY KRONE, HARRY A. LEVY—Irrevocable Trust, MINNIE GINSBERG, JEROME GRANGER, doing business as the SHERRY FRONTENAC HOTEL, Petitioners,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

[fol. 56]

Case No. 26,200

LEEVLANDS CORPORATION, Petitioner,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

Case No. 26,201

MONTE CARLO, INC., Petitioner,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

Case No. 26,202

2500 Collins Avenue Corporation, a Florida corporation, Petitioner,

v.

Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, Respondents.

An Appeal from the Circuit Court for Dade County, Robert L. Floyd, and Grady L. Crawford, Judges.

Sibley & Davis, Weldon G. Starry, and Thomas N. Barkdull, for Petitioners.

Fuller Warren, Warren, Klein & Moore, Gramling & Gramling and J. W. Brown, for Respondents.

[fol. 57] Opinion—Filed June 1, 1955

Per Curiam:

The foregoing cases are similar to Sax Enterprises, Inc., vs. Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, decided May 27, 1955. These cases were combined and heard together in the lower court. Application for temporary injunction was denied after evidence in each case. The reason for denial was that the "plaintiff has not made a sufficient showing for relief on the basis of the manner of the picketing and the method in which it is being conducted." The court further found that "defendants not having filed answers or other pleadings to the complaint, the allegation or contention made by the plaintiff that the picketing is conducted for an unlawful or illegal purpose is not considered nor passed upon, but determination of this question is reversed until final hearing."

On authority of Sax Enterprises, Inc., vs. Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert

H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, decided May 27, 1955, certiorari is granted as to that part of the Chancellor's order in each of said causes which deferred ruling upon the question whether or not the picketing was being carried on for an unlawful purpose, and each of said causes is remanded to the Circuit Court with directions to enter a temporary restraining order therein.

It is so ordered.

Drew, C.J., Terrell, Sebring and Hobson, JJ., concur.

[fol. 59]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1955

HARRY LEVY, et al., Petitioners,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

JUDGMENT—Entered June 1, 1955

Counsel for Petitioner having filed in this cause Petition for Writ of Certiorari and having been duly considered it is ordered by the Court that the said petition be and the same is hereby granted as to that part of the Chancellor's order in each of said causes which deferred ruling upon the question whether or not the picketing was being carried on for an unlawful purpose, and each of said causes is remanded to the Circuit Court with directions to enter a temporary restraining order therein; it is further ordered by the Court that the Petitioner do have and recover of and from the Respondents their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

[fol. 60]

IN THE SUPREME COURT OF FLORIDA

JUNE TERM, A. D. 1955

HARRY LEVY, MARK ALLEN LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURGH CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER and SALLY KRONE, HARRY A. LEVY—Irrevocable Trust, MINNIE GINSBERG, JEROME GRANGER, doing business as the SHERRY FRONTENAC ~~HOTEL,~~ Petitioners,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

ORDER ON SUPERSEDEAS—June 24, 1955

Upon an inspection of a certified transcript of record brought here upon an application for an order of supersedeas in the above-styled cause, it is hereby ordered that the Petition for Writ of Certiorari filed in this Court in said cause on May 16th, 1955, shall have the force and effect of and do operate as a supersedeas of the order or decree sought to be reviewed upon such Petition upon the Petitioner giving or causing to be given a bond in the sum of $5000.00, conditioned to pay all costs, damages and expenses occasioned by reason of the stay of proceedings in the event the order or judgment of which review is sought is not quashed, modified or reversed, said bond to be approved by the Clerk of the Circuit Court for Dade County.

[fol. 73]

IN THE SUPREME COURT OF FLORIDA

JUNE TERM, A. D. 1955

EN BANC.

Case No. 26,197

BOCA RATON CLUB, INC., a Florida corporation and HILDEMART CORPORATION, a Florida corporation, Petitioners,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

Case No. 26,198

SORRENTO HOTEL CORP., a Florida corporation, Petitioner,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH, and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

Case No. 26,199

HARRY LEVY, MARK ALLEN LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURGH CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER and SALLY KRONE, HARRY A. LEVY—Irrevocable Trust, MINNIE GINSBERG, JEROME GRANGER, doing business as the SHERRY FRONTENAC HOTEL, Petitioners,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

[fol. 74]

Case No. 26,200

LEEVLANDS CORPORATION, Petitioner,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

Case No. 26,201

MONTE CARLO, INC., Petitioner,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

Case No. 26,202

2500 COLLINS AVENUE CORPORATION, a Florida corporation, Petitioner,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

Writs of Certiorari to the Circuit Court for Dade County, Robert L. Floyd and Grady L. Crawford, Judges.

W. G. Starry and Sibley & Davis, for Petitioners.

J. Carrington Gramling, Warren, Klein & Moore and J. W. Brown, for Respondents.

[fol. 75] OPINION—Filed October 19, 1955

Hobson, J.:

In *Sax Enterprises* v. *Hotel Employees Union Local No. 255*, 80 So. 2d 602, we decided a prior aspect of the matter which the cases now under consideration bring before this court. In the *Sax* case we held on the basis of the showing made that it was error to deny a temporary restraining order against the picketing of the Saxony Hotel. The injunctive relief which was granted as a result of our mandates in the *Sax* case and in the instant cases related to picketing and the publicity measures used by the defendants-respondent union in connection therewith. Subsequently defensive pleadings were filed and further testimony taken upon motions of the respondents to dissolve and vacate the temporary injunctions issued pursuant to the mandates of this court. The chancellors below have issued orders of identical effect in all of these cases, granting the motions and dissolving and vacating the temporary injunctions.

Although the parties have attempted to present a multitude of issues in these cases, we are of the view that the only issues really involved are whether (1) the respondent union complied with the prerequisites to lawful picketing outlined in our opinion in the *Sax* case, supra, and (2) whether the picketing was for a lawful or unlawful purpose.

The chancellors found in substance that before the picketing commenced, the union did in fact represent some of the employees although less than a majority; that the union informed the petitioners of its desire to engage in negotiations, and that the petitioners used evasive tactics amounting to a refusal to negotiate or bargain. No one of the chancellors, however, made a finding that the union had, prior to the picketing, established by evidence of substantial character that any of the employees had chosen it as their representative.

[fol. 76] Respondents contend that: the findings which were made are supported by competent substantial evidence; such findings in effect established the truth of the message contained in the cards which were displayed by

the pickets, and which we reproduced in the *Sax* case, supra; the matter thus resolves itself into a situation where peaceful picketing has been carried on with the objective of accurately publishing the facts of a labor dispute, which is a lawful purpose within the doctrine of *Whitehead* v. *Miami Laundry Co.*, Fla., 36 So. 2d 382, and *Johnson* v. *White Swan Laundry, Inc.*, 41 So. 2d 874.

Petitioners take the position that the respondent union failed to prove compliance with the prerequisite to lawful picketing set forth in the *Sax* opinion, of establishing "that the employees have chosen it as their representative."

In our opinion in the *Sax* case we said:

> "Without doubt a labor organization has the right to engage in peaceful picketing of an employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union as the representative of such employer's employees. In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative, Treasure, Inc., v. Hotel & Restaurant Employees and Bartenders' Union, supra, and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations. See North East Texas Motor Lines, Inc., v. Dickson, 148 Tex. 35, 219 S. W. 2d 795."

[fol. 77] Respondents say that the above pronouncements were nothing more than obiter dicta and that in any event they run counter to the established law of this jurisdiction. They cite our opinion in *Hotel & Restaurant Employees' & Bartenders' Union Local No. 156, A. F. of L.* v. *Cothron, et al.*, 59 So. 2d 366, from which we quote:

> "It appears that the Chancellor either misconstrued or misapplied the law to the facts as he found them in entering the injunction. The Chancellor stated that 'Complainants should have been advised of the reasons for the impending picketing and given an opportunity to remedy the cause as they saw fit.' This was

> **no reason to grant an injunction in this case. There is no rule, regulation, or law of this State which requires a notice to the employer of the reasons for an impending strike, as a prerequisite to picketing, and the Courts are without power to supply such rule, regulation or law. The advisability or necessity for such is for legislative determination and not for the courts."**

We fact (sic) this contention of respondents forthrightly. Our opinion in the *Cothron* case does indeed appear to be contrary to our statement in the *Sax* case, supra, to the effect that as a prerequisite to lawful picketing "the labor organization must also inform the employer of the object to be accomplished by the picketing". It might be said that the underlying reason for our ruling in the *Cothron* case [fol. 78] is a sound basis for recanting our pronouncement as to the other two prerequisites to lawful picketing outlined in the *Sax* opinion. We have given careful consideration to the apparent conflict between these two cases and have concluded that although there may exist "no rule, regulation or law of this State which requires" the foregoing prerequisites to lawful picketing, certainly honesty of purpose, fair dealing and a sound public policy demand them. Moreover, Sec. 447.03 F.S., grants unto *employees* the right to "*self*-organization" (Italics supplied) and "to bargain *collectively* through representatives of *their own choosing*" (Italics supplied). It seems clear that before being required to enter into negotiations with an alleged bargaining agent an employer should be shown by evidence of substantial character that his employees, or at least some of them, have voluntarily exercised the rights accorded them by our statute. Hence, we deem it appropriate for the courts to fix reasonable and fair prerequisites to the end that, rather than economic strife, there may exist peaceful accord of labor disputes so necessary in the interest of the common weal.

The placards displayed by the pickets carried the following words: "This hotel refused to negotiate with the Hotel Employees Union, Local #255, American Federation of Labor, 1575 Washington Avenue, Miami Beach". This language unquestionably connotes to the "common mind"

a compliance with all prerequisites to lawful picketing, i. e., a pre-existing honest and forthright attempt to bring about negotiations between an authorized bargaining agent and the employer because of a bona fide labor dispute between [fol. 79] employees and employer and a fair opportunity to engage in negotiations. It is clear that such an opportunity cannot be said to exist until and unless the employer is first assured by evidence of substantial character that if he negotiates he will do so with an authorized bargaining agent. The words on the placards "refused to negotiate" necessarily presuppose an opportunity to negotiate. Surely no one can doubt that such opportunity should be a "fair" opportunity. The placards did not speak the truth in all of its stark significance or give to the public actual facts concerning a labor dispute. Indeed, so far as this record shows petitioners, except for the uncorroborated representations of a putative bargaining agent, never, prior to the most recent hearing in the circuit court, knew as a matter of fact that their employees were actually dissatisfied and had, because of such dissatisfaction, designated the respondent and (sic) their bargaining agent. It follows, as night the day, that without such knowledge they could not know that a labor dispute existed nor, indeed, would a labor dispute normally come into being without some dissatisfaction on the part of the employees. No dispute of any kind or character can exist unless the parties said to be involved know that there is actually disagreement between them.

Moreover, it is the duty of the employer to treat only with the employees' true representative and the unsupported statement of a labor organizer is an insufficient showing to justify the employer in dealing with the alleged bargaining agent. In *Texarkana Bus Co.* v. *National Labor Relations Board*, 119 F. 2d 480, the court stated, and we quote with approval:

> "The employer cannot be required to devote his time to negotiating with every individual claiming to rep- [fol. 80] resent a bargaining unit, and cannot be charged with unfair practice in this regard unless there is presented to him evidence of a substantial character showing that the representative is in fact an authorized bargaining agency."

Although the court was there dealing with the National Labor Relations Act which *does not* "require an employer to bargain collectively with a union which has not been designated by a majority of the employees in an appropriate unit" (italics supplied), nevertheless the rationale of the opinion is (sic) that case is equally applicable here. This is so because there is no rule, regulation or law of this State of which we are cognizant which requires an employer to bargain collectively with a union which has not been designated by at least some of the employees in an appropriate unit. The Circuit Court of Appeals of the Eighth Circuit in the last cited case said, and we again quote with approval:

> "As the employer must act at his peril in recognizing a representative, common prudence dictates that he refrain from acting until satisfactory proof is produced that the representative in fact speaks for a majority of the employees."
> 119 F. 2d 480, 484.

It is deemed appropriate to observe that we have outlined *prerequisites* to lawful picketing and it is not sufficient to establish even in court, after picketing is a reality that the putative bargaining agent had in fact, prior to picketing, been so designated by an insignificant number or, for that matter, a majority of the employer's employees. [fol. 81] We hold herein that as prerequisites to lawful picketing the union must establish by some evidence of substantial character that at least some of the employees have chosen it as their representative and "afford to the employer a fair opportunity to engage in negotiations", any pronouncement in the *Cothron* case to the contrary notwithstanding. We might add that we deem it necessary in order to afford to the employer a fair opportunity to engage in negotiations that the labor organization inform the employer of the subjects intended for negotiation.

The picketing of petitioners' places of business by the respondent union under the facts and circumstances of these cases and upon the basis that petitioners refused to negotiate with the union is the unlawful use of economic pressure to coerce the petitioners into negotiations

with an alleged agent who failed and refused as required by law and just dealing timely and appropriately to establish his authority. Hence the picketing is for an unlawful purpose.

Respondents, however, say the petitioners knew that certain organizers, particularly the respondent Mr. David Herman, had attempted to persuade the employees to designate respondent union as their bargaining agent or to join the union, as is evidenced by the fact that the employers endeavored to dissuade the employees from taking either action. Such circumstance falls far short of establishing as a matter of fact that the employees had pursued either course and it assuredly does not prove that the employers knew that the employees, or any of them, had actually so designated the union or had joined it.

[fol. 82] This record paints a picture not of employees exercising their right to "self-organization" or their right to "bargain collectively through representatives of their own choosing" but, on the contrary, limns one of two labor organizers coming to Miami Beach early this year, organizing a local labor union, and attempting for a perior (sic) of two to three months, as they had every right to do, to persuade petitioners' employees that they were not being treated fairly in the matter of hours, wages and conditions of work, and that they should therefore designate the union as their bargaining agent or join the union or do both. After failing to so persuade no more than an insignificant number of such employees that they were being treated unfairly, as is established by the designation cards introduced in evidence, they immediately resorted to the use of the coercive effect of picketing without either of them first establishing by any evidence substantial in character that the respondent union in truth and in fact had been designated as the bargaining agent of any employees of the petitioner. Thereafter these men, who cannot be said to have given the employers a fair opportunity to negotiate since they gave said employers no substantial evidence of the union's authority to represent any of the employees, arranged for and had the picket lines thrown up for the obvious purpose of

forcing the employers to cause their employees to designate the union as their bargaining agent and perhaps to join the union. That picketing carried on under such circumstances is unlawful cannot be gainsaid. It falls within the "unlawful purpose" doctrine of *Miami Typrgraphical* (sic) *Union* v. *Ormerod*, 61 So. 2d 753.

[fol. 83] We hold that the picketing in these cases was begun by respondents without first having submitted to the petitioners competent substantial evidence of their authority as alleged bargaining agents, which caused the picketing to be unlawful, and that the picketing was carried on for an unlawful purpose.

We do not deem it necessary to determine the applicability in these cases of Sec. 447.09 (3) Florida Statutes or its constitutionality.

The petitions for certiorari should be granted and the challenged orders quashed.

It is so ordered.

Drew, C.J., Terrell and Sebring, JJ., concur.

[fol. 85]

IN THE SUPREME COURT OF FLORIDA

JUNE TERM A.D. 1955

HARRY LEVY, MARK ALLEN LEVY TRUST, EDWIN J. FRIED, GENERAL OPERATING Co., et al., Petitioners,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Respondents.

JUDGMENT—October 19, 1955

Counsel for Petitioner having filed in this cause Petition for Writ of Certiorari and having been duly considered, it is ordered by the Court that the said petition

be and the same is hereby granted and the challenged order quashed; it is further ordered by the Court that the Petitioner do have and recover of and from the Respondents its costs by it in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared by Mr. Justice Hobson was this day ordered to be filed.

[fol. 88]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

IN CHANCERY NO. 178,668-J

HARRY LEVY, MARK ALLEN LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURGH CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER and SALLY KRONE, HARRY A. LEVY—Irrevocable Trust, MINNIE GINSBERG, JEROME GRANGER, doing business as the SHERRY FRONTENAC HOTEL, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, (A. F. of L.) et al., Defendants.

STIPULATION RE DATE OF FILING OF SUPPLEMENTAL ANSWER—February 24, 1956

It Is Stipulated by and between counsel for respective parties that the Supplemental Answer attached hereto was filed on June 28, 1955 and was apparently misfiled but for the purpose of the Record On Appeal the said Supplemental Answer shall be deemed and considered as having been filed June 28, 1955 as a predicate for the affidavit of Clarence Smith attached to the Stipulation Re Final Decree.

Witness our hands at Miami, Dade County, Florida this 24th day of February, 1956.

Sibley & Davis, Attorneys for Plaintiffs, /s/ Marion Sibley.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, /s/ Carrington Gramling.

[fol. 89]

SUPPLEMENTAL ANSWER—Filed June 28, 1955

Come Now the defendants and make this their Supplemental Answer and would respectfully show unto this Honorable Court that this Court is without jurisdiction to act in the cause for the reason that the plaintiffs in operation of said hotel are engaged in a business which affects inter-state commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state buslines, inter-state and international steamship companies and by passenger automobiles.

Said business further is part of "package deal" arrangements with said various inter-state and international airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Trans-World Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular & Occidental Steamship Company, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coast Line Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus

[fol. 90] line companies incuding Greyhound Bus Line Company, Trailways Bus System and various other inter-state bus line companies. Said "package deal" arrangements are arrangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by plaintiffs and said inter-state carriers. All expenses incurred in promoting, making and consummating said inter-state and international sales are jointly shared by plaintiffs and said inter-state and international carriers. The proceeds of said inter-state and international sales are divided between plaintiffs as operator of said hotel and said inter-state and international carriers.

Said plaintiffs, as a part of the operation of said hotel, purchase numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said plaintiffs as a part of the operation of said hotel sell directly outside of the State of Florida and within the State of Florida for carriage or resale outside of the State of Florida.

Said plaintiffs as part of the operation of said hotel advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the states of the United States outside of the State of Florida and in various countries outside of the United States.

Plaintiffs as part of the operation of said hotel have on said premises various shops and services engaged in inter-state commerce including Western Union Telegraph services, numerous travel agencies, transportation offices for airlines, steamship lines, railroad companies and bus lines, inter-state stock exchange branches, inter-state chain drug stores, inter-state clothing stores and other inter-state retail stores.

Defendants further state that said hotel is part of a multi-state chain, said entire chain being engaged in inter-state commerce, so that labor disputes at plaintiffs' hotel affects inter-state commerce.

Defendants further state that the Congress of the United States has by legislative enactment under the Constitution of the United States, occupied the fields as to all matters complained of in the petition of plaintiffs and this State [fol. 91] Court has no jurisdiction to act in the premises wherefore the said cause should be dismissed for lack of jurisdiction.

Gramling & Gramling, J. W. Brown, Ben Gettler. By /s/ Carrington Gramling, 224 Shoreland Building, Miami, Florida, Solicitors for Defendants.

Certificate of service (omitted in printing).

[fol. 92]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 178688

[Title omitted]

STIPULATION RE FINAL HEARING—Filed November 30, 1955

It Is Stipulated by and between counsel for the respective parties that all testimony and other evidence heretofore introduced in this cause be and the same is hereby re-affirmed for the purpose of Final Hearing, with the single addition however, that at said Final Hearing, the defendants would produce Clarence Smith as a witness, who would testify according to affidavit attached hereto, and it is

Stipulated that said testimony would be objected to on the grounds that said testimony is immaterial and irrelevant; and it is

Stipulated that this testimony and the objections thereto be submitted to the Chancellor for ruling thereon, and in the event the objection is sustained, the affidavit shall re-

main as part of the record as a proffer, and all objections as to form of such proffer be and they are hereby waived.

[fol. 93] It Is Further stipulated that Final Decree be entered by the Chancellor upon the record as now made in the light of this Stipulation.

Witness our hands at Miami, Dade County, Florida this 30 day of November, 1955.

Sibley & Davis, Attorneys for Plaintiff, by /s/ Marion E. Sibley.

J. W. Brown & Gramling & Gramling, Attorneys for Defendants, by Carrington Gramling.

[fol. 94]

AFFIDAVIT OF CLARENCE SMITH FOR DEFENDANTS

Personally appeared before me the undersigned authority Clarence Smith, who being by me first duly sworn deposes and says as follows:

"My name is CLARENCE SMITH, and I am Business Agent of HOTEL EMPLOYEES UNION, Local 255. That plaintiffs, in the operation of their hotel are engaged in a business which affects interstate commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida, and from various countries outside of the United States by various interstate and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other [fol. 95] airlines as well as inter-state railroads, inter-state bus lines, inter-state and international steamship companies, and by passenger automobiles. Said business further is part of "package deal" Arrangements with said various inter-state and International airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Transworld Airlines, National Airlines, and many others; various interstate and international steamship companies including Peninsular and Occidental

Steamship Companies, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coastline Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus lines companies including Greyhound Bus Lines Company, Trailways Bus System and various other inter-state bus line companies. Said "package deals" arrangements are arangements (sic) whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an intergral (sic) part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by Plaintiffs and said inter-state carriers. All expense incurred in promoting, making and consummating said inter-state and inter-national sales are jointly shared by Plaintiffs, and said inter-state and international carriers. The proceeds of said inter-state and inter-national sales are divided between Plaintiff, as operator of said hotel and said inter-state and international carriers; said sales of Plaintiff in inter-state commerce exceed in volume amount sufficient to establish jurisdiction of National Labor Relations Board under its rules and regulations.

Said plaintiffs, as part of the operation of said hotel, purchase numerous items from outside of the State of [fol. 96] Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said Plaintiffs, as part of the operation of said hotel, sell directly outside of the State of Florida and within the State of Florida for carriage or re-sale, outside of the State of Florida. Said plaintiffs as part of the operation of said hotel, advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the states of the United States outside

the State of Florida and in various countries outside of the United States.

Further Affiant Sayeth Not.

/s/ Clarence L. Smith, Affiant.

Sworn to and subscribed before me this 15th day of November, 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large. My Commission Expires: Aug. 20, 1959.

(Seal)

[fol. 98]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 178,668

[Title omitted]

FINAL DECREE AND ORDER ON MANDATE—November 30, 1955

This Cause coming on to be heard upon application for an order on mandate and upon final hearing pursuant to the Stipulation of the parties to this cause, and it appearing to the Court that the defendants proffered the affidavit of Clarence Smith as evidence upon this final hearing, and plaintiffs objected to said affidavit on the ground that the same is immaterial and irrelevant, and the Court sustains the objection thereto upon said grounds. The Court having considered the entire record in this cause, including the testimony taken before the Court, and the Court being fully advised in the premises,

It Is Thereupon Ordered, Adjudged and Decreed that in compliance with the opinion, judgment and mandate of the Supreme Court of Florida, the order granting motion to [fol. 99] vacate injunction, which order is recorded in Chancery Order Book 1189, at Page 588, in the records of the Clerk of the Circuit Court of Dade County, Florida, be and the same is hereby vacated and set aside. The preliminary

injunction granted by the order of this Court on June 2, 1955, which preliminary injunctive order is recorded in Chancery Order Book 1187, at Page 375, in the records of the Clerk of the Circuit Court of Dade County, Florida, be and the same is hereby reinstated and the said preliminary injunction shall bind the defendants with the same force and effect as if the said order of dissolution had not been rendered.

It Is Further Ordered, Adjudged and Decreed that the said preliminary injunction be and the same is hereby made permanent. The injunction bond filed herein is hereby cancelled and the principal and surety released of all liability thereunder. The costs of this cause hereby assessed in the sum of $354.66 are taxed against the defendants, for which let execution issue.

Done and Ordered in Chambers at Miami, Florida, this 30 day of November, 1955.

/s/ Robert L. Floyd, Circuit Judge.

[fol. 100]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 178,668-J

[Title omitted]

NOTICE OF APPEAL—Filed January 4, 1956

The defendants, Hotel Employees Union, Local No. 255, et al., take and enter their appeal to the Supreme Court of Florida to review the order, judgment or decree of the Circuit Court for Dade County, bearing date the 30 day of November, 1955, entered in the above styled cause and recorded in the records of said Court in Book 1214, Page 240, and all parties to said cause are called upon to take notice of the entry of this appeal.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, by Carrington Gramling.

[fol. 101]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

IN CHANCERY NO. 178,668-J

HARRY LEVY, MARK ALLEN, LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., et al., d/b/a THE SHERRY FRONTENAC HOTEL, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL #255 (A. F. of L.) et al., Defendants.

ASSIGNMENTS OF ERROR—Filed January 13, 1956

Come now the defendants by their undersigned solicitors and make the following assignments of error as the errors which they intend to reply upon in the Supreme Court of Florida, for a reversal of the Order (or Final Decree) made herein on the 30th day of November, 1955, and recorded in Chancery Order Book 1214, page 240 of the records of this Court, from (sic) they have appealed:

1. The Court erred in enjoining the defendants in peaceful picketing the business place of the complainants, whereby your defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly, and the right to work or refrain from working as guaranteed within the meaning and scope of Sections I, XII, XIII, XVII and XIX, Declaration of Rights, Constitution of the State of Florida, and Amendments I, V, XIII and XIV of the Constitution of the United States of America.

2. The Court erred (in and by such final decree) in finding that the defendants should have established to the satisfaction of the employer, that the employees had chosen defendant Union as their representative and further requiring that the labor organization must also inform the employer of the object to be accomplished by picketing and

afford an unwilling or hostile employer an unspecified wait-
[fol. 102] ing period within which to engage in negotiations, all as a prerequisite to the right to strike and picket, whereby your defendants and the Union members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments, I, V, XIII and XIV, of the Constitution of the United States of America.

3. The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

5. The Court erred (in and by such final decree) in enjoining peaceful picketing and the dissemination of information predicated upon an unsubstantiated finding of fact, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

6. The Court erred in requiring a direct employer-employee relationship as a prerequisite to picketing and as a prerequisite to publicizing the existence of a labor dispute, contrary to Amendments I and XIV of the Constitution of the United States of America.

7. The Court erred (in and by such final decree) in permanently enjoining peaceful picketing and the publicizing of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefor, and beyond the scope of any finding of fact insubstantial or otherwise, thereby depriving the members of this Union [fol. 103] the guarantees of Amendments I and XIV of the Constitution of the United States.

8. The Court erred (in and by said final decree) in assessing costs against the defendants.

J. W. Brown, Gramling & Gramling, Solicitors for Defendants, by Carrington Gramling.

[fol. 106] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 108]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957

DIVISION B

Case No. 28,249

HOTEL EMPLOYEES UNION, LOCAL No. 255, (A. F. of L.), et al., Appellants,

v.

HARRY LEVY, MARK ALLEN LEVY TRUST, ERWIN J. FRIED, et al., Appellees.

An Appeal from the Circuit Court for Dade County, Robert L. Floyd, Judge.

J. W. Brown and Gramling & Gramling, for Appellants.

Sibley & Davis and Thomas H. Barkdull, Jr., for Appellees.

OPINION PER CURIAM—Filed March 15, 1957

Affirmed on authority of Fontainebleau Hotel Corp. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., opinion filed February 1, 1957.

Terrell, C.J., Hobson, Drew and O'Connell, JJ., Concur.

[fol. 110]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957

DIVISION B

Case No. 28,249

HOTEL EMPLOYEES UNION, LOCAL NO. 255, (A. F. of L.), et al., Appellants,

v.

HARRY LEVY, MARK ALLEN LEVY TRUST, ERWIN J. FRIED, et al., Appellees.

JUDGMENT—March 15, 1957

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellees do have and recover of and from the Appellants their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

[fol. 119] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. A]

IN THE SUPREME COURT OF FLORIDA

Case No. 28,242

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

STUYVESANT CORPORATION, a Florida Corporation, Appellee.

Transcript of Record—Filed April 5, 1956

J. W. Brown and Gramling & Gramling, 226 Shoreland Building, Miami, Florida, Attorneys for Appellants.

Sibley & Davis, Thomas H. Barkdull, Jr., 605 Lincoln Road, Miami Beach, Florida, Attorneys for Appellee.

[fol. 1]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

IN CHANCERY NO. 179408

STUYVESANT CORPORATION, a Florida Corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

COMPLAINT FOR INJUNCTION AND OTHER RELIEF—
Filed May 10, 1955

Comes Now the plaintiff, Stuyvesant Corporation, a Florida corporation, by its undersigned attorneys, and brings that, its complaint for injunction and other relief against the defendants, Hotel Employees Union, Local No.

255, (A. F. of L.) and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, and for such complaint, plaintiff alleges:

I.

Plaintiff is a corporation organized and existing under the laws of Florida, with its principal place of business in Miami Beach, Dade County, Florida.

Defendant, Hotel Employees Union, Local No. 255, (A. F. of L.) is a labor organization within the intent and purview of the laws of the State of Florida; Albert H. Berlin, Clarence L. Smith and Henry Mischel, are each residents of Dade County, Florida, and are each over the age of 21 [fol. 2] years; said individual defendants, and each of them, are the duly authorized business agents and officers of said labor organization.

II.

Plaintiff is the owner of an ocean front hotel consisting of 170 rooms, located at 6305 Collins Avenue, Miami Beach, Florida, more commonly known as the Lombardy Hotel. Said hotel has been in operation since December 15, 1950, and the plaintiff operates in connection therewith a cocktail lounge, coffee shop, dining room, swimming pool and cabanas, and other various facilities usual or necessary in the operation of a first-class hotel. Plaintiff's hotel has enjoyed a very fine reputation and is one of the leading ocean front hotels on Miami Beach. The hotel caters to the public by serving the finest grades of foods and beverages to its guests and patrons, and affords them the finest service facilities.

III.

Approximately 110 people are employed at the plaintiff's hotel, who perform services as cooks, maids, bell boys, waiters, elevator operators, and other similar duties normally required to operate and maintain a first-class hotel. Plaintiff has had no labor dispute with its employees in regard to wages, working conditions or any other phase of employer-employee labor relationship existing between

plaintiff and its employees. Plaintiff has always enjoyed the most cordial labor relations with its employees, and has at all times afforded to its employees, a satisfactory standard of wages and working conditions. No complaints have been received from plaintiff's employees in regard to hours, working conditions or wages, and plaintiff is wholly unaware of any labor dispute of any nature, character or description existing between it and its employees.

[fol. 3] IV.

Plaintiff believes and is informed that early in 1955, two labor organizers from the north arrived in Miami Beach and announced their intention of creating discord between employees and employers at some of the ocean front hotels on Miami Beach; the said organizers would thereby create for themselves a lucrative labor organization, through which said organizers would mulct large sums of money through the dues to be charged the employees, if they were able to entice said employees into joining with the organizers in creating a labor union. These northern organizers announced that they intended to form, and did form, a labor organization, which they have named Hotel Employees Union, Local No. 255, A. F. of L. Said union had no members, except the two professional organizers who arrived with the announcement that they constituted said labor organization.

Since said time, the said organizers, one of whom is David Herman, and the other is one of the defendants, Albert H. Berlin, have utilized all of the pressure tactics known to labor organizers to entrap the employees of plaintiff's hotel in becoming members of the said labor organization. Because of their failure in enlisting membership, said labor organizers engaged upon a plan to place pressure and threats upon the hotel owners, which would force the hotel owners, through economic sanctions, to sign contracts with the alleged labor organization, thereby using said contracts as a basis to force the employees of the hotels to become members of said alleged union.

To this end, David Herman contacted Mr. Saul Cohen, as the President of the Miami Beach Hotel Owners Associa-

[fol. 4] tion, and demanded that Mr. Cohen procure the owners of the first-class ocean front hotels on Miami Beach to execute labor contracts with the said labor union, thereby giving recognition to the said labor organization as representing the employees of said hotels, and in this way, enable said union to procure membership among the employees of said hotels. Said Herman threatened Cohen by stating that unless the Hotel Association actively enlisted the hotel owners to join with said union by giving it contracts as aforesaid, that the said Herman would, through economic sanction such as picket lines around the hotels, cause them great economic loss and force them through such economic loss and pressure, into giving the said union the contracts covering the employees in said hotels, who are not, in fact, members of, and are not, in fact represented by the said alleged union in any fashion whatsoever. The Miami Beach Hotel Owners Association, and its President, had no authority to represent the owners of the individual hotels in regard to any labor matters involving the owners of any particular hotel.

V.

The plaintiff has had no dealings whatever with any members of the Hotel Employees Union, Local No. 255, A. F. of L., in regard to its employees. Said union has never sought to negotiate with the plaintiff as the representative of plaintiff's employees; in fact, Local No. 255 does not represent the vast majority of the plaintiff's employees. No labor controversy or negotiations in regard to any labor dispute has ever been instituted, inaugurated, or carried on between the plaintiff and the said alleged union, and said union has never sought to bargain with the plaintiff as the alleged representative of plaintiff's employees, and plaintiff alleges that said union has never been authorized by the [fol. 5] vast majority of its employees to represent them.

VI.

Plaintiff has never refused to recognize the defendant union, and has never refused to negotiate with it; plaintiff has never been requested by said union to negotiate with

it, and has never been advised by the said union that it is the bargaining agent for plaintiff's employees, nor has the plaintiff been advised by said union that it is the labor organization representing plaintiff's employees, save and except that on several occasions prior to the institution of this suit, one purporting to be the aforementioned David Herman, telephoned Mr. Albert Grossman, who is the president of the plaintiff corporation. On Wednesday, May 4, 1955, Mr. Grossman spoke with said Herman on the telephone; Herman stated that he wanted to sit down and discuss recognition of the union as bargaining agent for the plaintiff's employees, and it was agreed that Grossman would meet with Herman in the next few days, at Herman's convenience.

No demand or grievance of any nature whatsoever of Plaintiff's employees has, up to the present time, been made of or placed before the plaintiff, its officers, agents or representatives.

Notwithstanding the fact that plaintiff and said Herman had agreed to meet at Herman's convenience, subject to Herman's establishing his right to represent plaintiff's employees, said union, at 2:00 o'clock in the afternoon, on Friday, May 6, 1955, placed a picket line consisting of six or more pickets in front of plaintiff's place of business, and each of said pickets in said line carried a placard or poster which falsely and fraudulently alleged that plaintiff had refused to negotiate with the defendant union. Each of said placards carried the following words:

> [fol. 6] "This hotel refuses to negotiate with Hotel Employees Union, Local #255, American Federation of Labor, 1575 Washington Avenue, Miami Beach."

Such representation made by said union is false and untrue, and the said union knows that said statements are false and untrue, and are made for the purpose of deceiving the public.

Mr. David Herman announced that the picket line was thrown up around plaintiff's place of business in retaliation for an injunctive order granted by Judge Pat Cannon against the union in a suit in which the plaintiff was in no wise involved. Said picket line was placed around plaintiff's

place of business for an unlawful and illegal purpose in that defendant union is carrying out its threat to the president of the Miami Beach Hotel Owners Association by placing economic pressure on plaintiff, thereby seeking to cause plaintiff, by loss of revenue thus occasioned, to execute a labor contract with the said union. This conduct of defendant union is unlawful, and is contrary to the Constitution and the Laws of the State of Florida, in that the said defendant union has never been certified to the plaintiff as the lawful bargaining agent of plaintiff's employees, and said union has never approached plaintiff to seek to bargain with it as the authorized bargaining agent of plaintiff's employees, and in that there has been no demand for collective bargaining made by said union upon the plaintiff. Thus, defendant union, through its unlawful conduct, seeks to force plaintiff to execute a contract with it in order that said union might use said contract to coerce and force plaintiff's employees to become members of said union.

VII.

Defendants have urged plaintiff's employees to strike, [fol. 7] walk out, and cease work at plaintiff's place of business, and they have enlisted an agreement from a small minority of plaintiff's employees to strike and cease work, and pursuant thereto, some of plaintiff's employees have walked out and ceased work. This conduct on the part of defendants was unlawful and directly in conflict with provisions of §447.09, sub-section 3, Florida Statutes, in that their agreement to strike and cease work was not authorized by a majority vote of plaintiff's employees to be governed thereby, and there was no election by secret ballot, as provided by §447.09, sub-section 4, of Florida Statutes.

VIII.

On the afternoon of May 6, 1955, the defendants and their henchmen congregated at the entrance to plaintiff's place of business in large numbers, and as a majority of plaintiff's loyal employees arrived for work, each was accosted by the group and urged to join the defendants' strike movement.

Some of the employees were threatened if they did not cease work, and many of them were intimidated by defendants and their associates, agents and servants. Several employees received anonymous telephone calls of threats of all manner of bodily harm and injury to their person, should they return to plaintiff's place of business. Most of the plaintiff's employees who refused to attend work did so because of coercion and intimidation placed upon them by the defendants. The defendants procured a large number of persons to gather at the entrance of plaintiff's hotel in an effort to discourage and threaten plaintiff's employees as they arrived. All of this was unlawful and contrary to the provisions of §447.09, sub-section 11, Florida Statutes.

IX.

The defendant union is maintaining the picket line around the premises operated by the plaintiff. Said picketing is un- [fol. 8] lawful and is in violation of §447.09, sub-section 13, Florida Statutes, in that the said union maintains more than six pickets in the short space surrounding plaintiff's place of business. Said pickets have not engaged in peaceful or reasonable picketing, and the same has become unlawful in that the pickets maintaining the picket line are attempting to stop patrons of plaintiff's hotel from entering or leaving the premises, and are using abusive and obscene language, and are harassing and threatening the plaintiff's patrons and guests.

X.

The picket banners carried by said pickets make false, unlawful and fraudulent statements, in that said banners charge the plaintiff with refusing to negotiate with defendant union, although said union knows the statements to be untrue and false. Thus, said union, through false and misleading picket banners, attempts to induce guests and patrons of plaintiff's hotel to leave, and through such fraudulent misrepresentations, defendants seek to destroy plaintiff's business and injure the plaintiff in the operation of its business.

XI.

By reason of the unlawful conduct of the defendants, members of the public are being deterred and stopped from patronizing the plaintiff's place of business, which is causing plaintiff irreparable loss and damage. There is no method or means by which the exact loss may be determined and there is no method or means of determining the full damages caused by such false and fraudulent conduct of the said defendant union.

XII.

The defendant union, and its representatives, threw up its picket line without notice or opportunity for plaintiff to present its cause to the Court to determine the right of the union to cause plaintiff the damage it is presently suf- [fol. 9] fering. Plaintiff is entitled to restoration of status quo ante by temporary injunction until such time as the Court may determine and declare whether or not the union is entitled to engage upon such conduct, which is aimed at destroying the plaintiff's business.

Forasmuch, Therefore, as plaintiff is without remedy in the premises, save and except in a Court of Equity, and to the end that justice may be done, plaintiff prays:

(a) That this Court temporarily enjoin and restrain the defendant union forthwith from maintaining said pickets or picket line at the plaintiff's place of business, and that the Court restore to plaintiff its status quo ante, pending a determination of the right of the defendant union to picket the plaintiff's place of business.

(b) That this Court temporarily enjoin and restrain the defendant union, and its agents, officers, representatives, servants and employees, including the defendants, Albert H. Berlin, Clarence L. Smith and Henry Mischel, from picketing or causing to be picketed or aiding and abetting in the picketing or authorizing the picketing of plaintiff's place of business, or of advertising or publishing any false and scandalous statements in reference to the plaintiff's business, or of the officers, agents, representatives and employees

of plaintiff corporation, or by any act or method of boycotting or injuring the same, either by picketing or otherwise.

(c) That this Court make such injunction permanent upon final hearing.

(d) That this Court grant such other and further relief as to it may seem meet and proper.

Stuyvesant Corporation, a Florida corporation, By: /s/ Albert Grossman, President (Plaintiff).

Sibley & Davis, 605 Lincoln Road, Miami Beach, Florida, Attorneys for Plaintiff, By: /s/ Marion E. Sibley, of counsel.

[fol. 10] *Duly sworn to by Albert Grossman jurat omitted in printing.*

[fol. 11]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 179,408

[Title omitted]

ANSWER—Filed May 12, 1955

Come Now the defendants and make this their Answer to the complaint and answering, say:

1. They admit the identity of the parties hereto as alleged in Paragraph 1.

2. They are without knowledge as to the matters and things set forth in Paragraph 2, but aver that if the said hotel enjoys a fine reputation and valuable good will that such asset has been created in large measure by the excellence of performance by the many employees of said hotel while said employees are yet not recognized by the plaintiffs through their duly designated representative of their own choosing, to-wit: Hotel Employees' Union Local No. 255;

and that the purpose of this instant litigation is to deprive the said employees who have contributed so richly to the success of plaintiff hotel of their constitutional and statutory guarantees of being represented for collective bargaining purposes by representatives of their own choosing.

3. Defendants admit that the said hotel employs many people as cooks, waiters, bell boys, maids, elevator operators and other similar duties normally required to operate and maintain a hotel, but deny the remaining allegations of Paragraph 3 of the complaint and aver that the employees of plaintiffs' hotel have long been dissatisfied with their wages, working conditions and other phases of the employer-employee labor relationship and aver that plaintiff has suffered a large turnover in the employees, because of the sub-standard rate of pay, working conditions, adjustment [fol. 12] of grievances and other inter-related factors; and would aver that the many complaints on the part of the employees have been properly brought to the representatives of their own choosing as guaranteed by law, to-wit: Hotel Employees' Union Local No. 255, A. F. of L.; but that plaintiff hotel has at all times refused to negotiate or settle the many differences and grievances existing and under which the employees are now suffering.

4. Your defendants, not waiving their Motion to Strike Paragraph 4 of the complaint, would show that the individual officers of this union named in the complaint have been bona fide residents of this jurisdiction for many years respectively, to-wit:

Al Berlin	thirty-two years
Clarence L. Smith	eighteen years
Harry Mischel	eighteen years,

and are local home owners, maintaining their families as an integral part of Dade County, Florida, and that the said union was chartered by its International Union March 1, 1954 with a membership at that time of approximately thirteen hundred members; and that the said union has a present membership of approximately five thousand members; that because of the tactics of the plaintiff employers

and other employers in the Community, acting in concert with the plaintiff in this cause, the employees of this plaintiff were denied representation in labor matters by agents of their own choosing and their wages were held far below existing standards in communities of similar size and nature; that hours per week are longer and more arduous than prevail in all similar establishments in other communities; that no machinery is tolerated by plaintiff employer for adjustment of bona fide grievances and that the employees of plaintiff generally were oppressed and militated against to such extreme that their anguished cries were heard in Cincinnati, Ohio, whereby and whereupon the Hotel and Restaurant employees and Bartenders International Union, consistent with its gracious objectives, did lend aid, comfort and support to the oppressed employees by lending them the services of said Dave Herman for the purpose of appealing to plaintiffs and their respective consciences, if any, in the hope that those employees may be liberated from the economic bondage in which they are currently unmercifully shackled.

5. Your defendants deny that they have never sought to [fol. 13] negotiate with the plaintiff as the representative of plaintiff's employees and aver that Local 255 represents the vast majority of plaintiff's employees. Defendants admit that plaintiff has had no dealings whatever with any members of defendants' organization, but aver that the plaintiffs have failed and refused to have any dealings whatsoever with members of the Hotel Employees Union Local No. 255 A. F. of L., as a result of refusal to recognize the constitutional and statutory guarantees of the many employees in the matter of self-organization and collective bargaining; and your defendants deny each and every of the remaining allegations of the said Paragraph 5.

6. These defendants answering Paragraph 6, deny that the plaintiffs have never refused to recognize the defendant union and aver to the contrary that the very existence of this litigation and of the picketing line complained of in Paragraph 6, conclusively establishes that there has been no recognition of the bargaining agent or the labor repre-

sentative of the employees and in making answer to Paragraph 6, would respectfully direct the attention of the court to plaintiff's own words in the first sentence of Paragraph 5 of the complaint, to-wit: "The plaintiffs have had no dealings whatever with any members", etc., and your defendants aver that the cause of the picketing complained of in Paragraph 6 is admitted by plaintiff in the aforequoted opening words of Paragraph 5; and these defendants deny that they are picketing to require the plaintiff hotel to execute a labor contract and aver that no proposed labor contract has been submitted to plaintiffs, for that plaintiffs have failed and refused to recognize the union or to in any manner negotiate or to consent to negotiate in the matter of a labor contract whatsoever; and these defendants deny that they seek to force the plaintiff to execute a contract in order to coerce and force plaintiff's employees to become members of said Union for that this union undertakes to represent only such employees as have duly designated this union as the representative of their own choosing, as provided for in FSA 447.03.

Your defendants admit the picketing but aver that the picketing is for the purpose of appealing to the friends and sympathizers of these defendants and its members and is an exercise of the freedom of speech as guaranteed to these defendants and the members of the defendant union, as set forth in Chapter 447.13 Laws of Florida;

And your defendants deny that Albert Grossman, who is president of the plaintiff corporation, ever in good faith con- [fol. 14] sented to negotiate with the Union nor to recognize it as the bargaining agent on behalf of such employees of the Lombardy Hotel as are members of the Union, nor to hold a secret ballot to ascertain the validity of the agencies of defendants and your defendants deny that the picket line was placed about the Lombardy Hotel in retaliation for an injunctive order granted by Judge Pat Cannon against the Union, but aver that the picketing was for the uses and purposes hereinabove expressed.

7. Your defendants deny each and every of the material allegations of Paragraph 7 and deny that any action has

been taken whatsoever as would come within the scope of FSA 447.09, as alleged in the complaint.

8. Defendants deny each and every of the material allegations of Paragraph 8 as fully and completely as though each were herein set forth and severally categorically denied.

9. Defendants deny each and every of the material allegations of Paragraph 9 as fully and completely as though each were herein set forth and severally categorically denied.

10. Defendants deny each and every of the material allegations of Paragraph 10 as fully and completely as though each were herein set forth and severally categorically denied; and

11. Defendants deny each and every of the material allegations of Paragraphs 11, 12 and 13, as fully and completely as though each were herein set forth and severally categorically denied.

On information and belief, your defendants aver that members of the public are being deterred and stopped from patronizing the plaintiff hotel, but would aver that if such is the case, it is only because friends and sympathizers of oppressed working people have determined to withhold their patronage from a place of business that refuses to negotiate with the bona fide representative of the employees of plaintiff hotel, contrary to the established American way of life and contrary to the spirit and intent of the public policy of the great United States of America, as expressed in the several pertinent Congressional Acts on said subject as well as enunciations of the Supreme Court of the United States of America and contrary to the policy of the State of Florida as enunciated in Article 12 Declaration of Rights, Constitution of Florida and FSA 447.01(1) and 447.03, but your defendants aver that plaintiffs are bound by their several respective utterances and releases to the Press, wherein they aver in effect that they are experiencing [fol. 15] "business as usual".

12. Defendants are without knowledge of any law of the State of Florida or otherwise, which would require notice or opportunity for the plaintiff to present its cause to the Court prior to any picketing and otherwise denies the material allegations, if any, of Paragraph 12 of the complaint.

AFFIRMATIVE ANSWER.

Your defendants, having made full, true and complete answer to the complaint, would make their affirmative answer as follows:

Your defendants aver each and every of the allegations of the foregoing answer as though herein at this point repeated and aver in addition thereto that the plaintiffs seek to maintain this litigation in a court of equity and good conscience with unclean hands, for that the plaintiff has denied to its many employees the statutory and constitutional guarantees of representation and collective bargaining as afore set forth and are endeavoring to frustrate and to bring to naught the provisions of the aforesaid statutory Constitutional clauses and enactments, contrary to equity and good conscience.

That your defendant union as the spokesman and representative of its members who are employed by plaintiff, has long sought to bring about negotiations and the plaintiff has failed and refused to respond to the invitations and solicitations of this defendant union, acting on behalf of its members and that the picketing became necessary in order to appeal to the friends and sympathizers of the members of defendant union who are employed by plaintiff, in an endeavor to cause plaintiffs to recognize your defendant union as a lawfully constituted bargaining agent, as aforesaid; that in the utmost of good faith, your defendant union has invited plaintiffs, to hold an election by secret ballot under any fair and impartial authority and by such secret ballot, demonstrate to plaintiff the bona fidees (sic) of defendant union's assertion concerning majority representation.

That plaintiff seeks to deprive these defendants and the members of defendant's union of the constitutional guar-

antee of freedom of speech, as provided for in Article 1 and [fol. 16] XIV Bill of Rights, Constitution of the United States of America and the similar provisions of the Declaration of Rights of the Constitution of the State of Florida and the Guarantee of Chapter 447.13 Laws of the State of Florida.

Wherefore, your defendant union prays this Honorable Court for the appointment of a Commissioner to hold an election and ascertain and report to this Honorable Court the truth and accuracy of the foregoing statement as to majority representation by the said Union and that this Honorable Court enter its Declaratory Decree declaring this Union to be in fact the duly authorized representative of the majority of plaintiff's "service" employees and that upon judicial ascertainment and Declaratory Decree, that this Honorable Court by its mandatory injunction, require the plaintiff to negotiate and bargain in good faith with this Union on behalf of the members of the Union, who are the employees of plaintiff, as is contemplated by Chapter 447 of the Laws of the State of Florida, together with Section 12 of the Bill of Rights, Constitution of the State of Florida and to deny the relief sought in the original complaint.

Fuller Warren; Warren, Klein & Moore; Gramling & Gramling; J. W. Brown, By Carrington Gramling, Solicitors for Defendants, 224 Shoreland Building, Miami, Florida.

Certificate of service (omitted in printing).

[fol. 19]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 179,408

[Title omitted]

SUPPLEMENTAL ANSWER—Filed May 27, 1955

Come Now the defendants and make this their Supplemental Answer and would respectfully show unto this Honorable Court that the allegations of the Complaint and the prayer for relief in said complaint predicated upon such allegations alleging and averring a failure on the part of your defendants to meet the requirements of 447.09 (3 and 4) seek only to deprive your defendants of their constitutional guarantees of freedom of speech and to impose upon the individual members of the defendant Union an involuntary servitude contrary to the provisions of the 1st, 13th and 14th Amendments of the Constitution of the United States of America for that the requirement of a majority vote, by secret ballot of all employees to be affected by a proposed strike would be to abridge and deprive each individual of his constitutional right to speak freely his opinions and to refrain from working, individually or in concert with others, contrary to the aforesaid Constitutional provisions; that the said Statute would impose a prior censorship upon the right to freely express one's opinions and to refrain from working and to make known the facts of a labor dispute; that the provisions of said Statute if applied to the facts of this instant cause so as to grant the relief prayed for by the plaintiffs would be to abridge these defendants and the members of the Union of their Constitutional guarantees as aforesaid.

Fuller Warren; Warren, Klein & Moore; Gramling & Gramling; J. W. Brown, By Carrington Gramling, Solicitors for Defendants, 224 Shoreland Building, Miami, Florida.

[fol. 20] Certificate of service (omitted in printing).

[fol. 21]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 179408-B

STUYVESANT CORPORATION, a Florida Corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION LOCAL No. 255, AMERICAN FEDERATION OF LABOR; et al., Defendants.

Miami, Florida

Transcript of Hearing—Tuesday, May 31, 1955

The above-entitled cause came on for hearing before the Hon. Marshall C. Wiseheart, Judge of the above-styled court, at the Courthouse, Miami, Florida, on Tuesday, May 31, 1955, at 12:15 o'clock p.m., pursuant to notice.

APPEARANCES:

Thomas H. Barkdull, Esq., and Milton Grusmark, Esq., of the firm of Sibley & Davis, on behalf of the Plaintiff.

J. Carrington Gramling, Esq., of the firm of Gramling & Gramling; and J. W. Brown, Esq., and Ben Gettler, Esq., of Cincinnati, Ohio, on behalf of the Defendants.

[fol. 23] The Court: All right, gentlemen, you all want to take some testimony?

Mr. Barkdull: Yes, sir.

The Court: All right.

Thereupon—SAMUEL G. JAMISON was called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Grusmark:

Q. Will you state your name, please?
A. Samuel G. Jamison.
Q. Where do you live, Mr. Jamison?
A. Lombardy Hotel, 6305 Collins Avenue.
Q. Do you hold any official position with the hotel?
A. I am vice president.
Q. About how many rooms do you have in the hotel?
A. 105. We lease the south wing, which has about 65. That is 170 altogether.
Q. How many employees do you have normally—how many do you normally carry on your payroll?
A. I would say about over 100.
Q. Mr. Jamison, could you tell us, to simplify this, when the pickets first started parading at the Lombardy Hotel?
[fol. 24] A. I don't remember the date, but it was a few minutes after the injunction was granted to the Casa Blanca.

Mr. Gramling: I object to that, if your Honor please. It is not responsive to the question and it is argumentative.

By Mr. Grusmark:

Q. Refreshing your recollection, was that May 6th, on a Friday?
A. I believe so; yes, sir.
Q. About what time, Mr. Jamison?
A. About 2 o'clock in the afternoon.
Q. Now, up to that time, had you ever been approached by anybody representing Local 255, the defendant in this case, establishing to you that they represented the employees of your hotel?
A. No.
Q. Had you ever been told by the employees of your hotel that they had authorized Local 255 to represent them?

A. No.

Q. Had you ever been told by anybody representing Local 255, that there were a number of grievances that your employees had?

A. No.

Q. Had you ever been told by any of your employees about any grievances they had?

A. Never.

[fol. 25] Q. Had you ever received any demands to correct any complaints existing in the hotel?

A. Never.

Q. Can you please tell the Court, as best you can, whether or not this picketing has had any effect on your business?

A. Yes, I think it has a very serious effect. Our income this month is considerably less than that from last year, and we feel that the propaganda spread by the unions up North, through newspaper ads and through leaflets given to people in front of airline offices, and other places, have seriously affected our business.

Q. Mr. Jamison, do you know whether your partner had any conversations with anybody representing the Union?

Mr. Gramling: I object to that, your Honor, as calling for hearsay, unless he was present, and the question is not so framed to inquire.

Mr. Grusmark: I didn't ask him what the conversations were. I asked him—I don't want to know what the conversations were, just whether you know if he had any conversations.

The Witness: I understand he did; yes, sir.

By Mr. Grusmark:

Q. I show you a photograph, Mr. Jamison and ask you if you can identify this location.

A. You mean this photograph?

Q. The general location.

[fol. 26] A. Yes, sir. This is the front of the Lombardy, and this is a scene of the gas station across the street from the Lombardy.

Q. Is the language on the sign the language that appears on the signs carried by the pickets?

A. Yes, sir, it is, "This hotel refuses to negotiate."

Mr. Grusmark: We tender this photograph as Plaintiff's Exhibit No. 1.

Mr. Gramling: May I inquire is this to establish the wording, or is it to establish any other matters, such as the appearance of the hotel?

Mr. Grusmark: Just the wording.

Mr. Gramling: No objection.

The Court: All right; let it be marked.

(The photograph referred to was thereupon marked, "Plaintiff's Exhibit No. 1.")

Mr. Grusmark: That's all.

Cross examination.

By Mr. Brown:

Q. Do you say you are one of the owners of the Lombardy Hotel?

A. I am one of the stockholders of the Stuyvesant Corporation, the corporation that owns the hotel.

Q. You are one of the stockholders of the corporation?

[fol. 27] A. Yes, sir.

Q. And who are the other major stockholders?

A. Mr. Grossman is the only other stockholder.

Q. So Mr. Grossman and you, to all practical extents and purposes, own the hotel?

A. We own the stock of the corporation that owns the hotel, yes, sir.

Q. Mr. Grossman is the major stockholder, is he not?

A. He is not. We are equal stockholders.

Q. Do you reside in Miami Beach?

A. I live at the Lombardy Hotel.

Q. All year round?

A. Well, I am there, unless I go on vacation. This is my permanent residence.

Q. Your voting residence?

A. My voting residence; yes, sir.

Q. What are your duties in connection with the Lombardy Hotel?

Mr. Barkdull: I object to that. I think it is immaterial to this case, what his duties are in connection with the hotel. He testified he is one of the owners.

Mr. Brown: I am just asking the background of this witness, your Honor.

The Court: I am going to overrule the objection. Proceed.

[fol. 28] By Mr. Brown:

Q. Will you tell us what your duties are, sir?

A. I don't have any specific duties.

Q. You are not a part of the active administration of the hotel from day to day, are you?

A. No.

Q. You are the vice-president of the corporation, isn't that it?

A. Vice-president of the corporation, and I live at the hotel, and I get daily reports, and I am in constant contact with the activities of the hotel. I don't actively manage it, but I know what goes on.

Q. You said that the hotel employed approximately 100 employees; is that correct?

A. I believe so. That is my understanding.

Q. How many of those would be waitresses?

A. I couldn't tell you.

Q. How many would be waiters?

A. I couldn't tell you that.

Q. Would you know the breakdown by various categories?

A. No.

Q. You wouldn't know how many are desk clerks?

A. No.

Q. Or management employees?

[fol. 29] A. No, I don't know that.

Mr. Brown: That's all.

Mr. Grusmark: No further questions.

The Court: All right; call the next witness.

Thereupon—ALBERT GROSSMAN, was called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Grusmark:

Q. Will you please state your name?
A. Albert Grossman.
Q. Where do you live, Mr. Grossman?
A. Lombardy Hotel.
Q. You are president of the Stuyvesant Corporation?
A. Yes, sir.
Q. You are the Mr. Grossman which Mr. Jamison referred to as the other stockholder; are you not?
A. Yes, sir.
Q. Now, preceding the picket line on May 6th, in 1955, did you ever have any conversations with anyone representing Local 255, or telling you they represented Local 255?
A. I did.
Q. Mr. Grossman, will you please tell us when the first conversation was you ever had in connection with this [fol. 30] matter?
A. The first conversation was on Monday, preceding the strike.
Q. With whom was that conversation?
A. Mr. Herman.
Q. How did that conversation take place—in person, on the phone or what?
A. It was on the telephone. I returned the previous call from him.
Q. When had the previous call been made?
A. On Sunday.
Q. You returned the call on Monday?
A. That's right.
Q. Did you speak with Mr. Herman?
A. I did.
Q. Did you know Mr. Herman?
A. No.
Q. Have you met him personally since then?

A. I have not.

Q. Will you tell the Court, please, what the conversation was, as best you can recall?

A. I called Mr. Herman and told him I was returning his telephone call. Mr. Herman wanted to know when we could get together. I said I would ask him to speak to our attorney. I didn't feel I was qualified to handle any nego- [fol. 31] tiations of any kind.

Q. Please speak up, Mr. Grossman.

A. Mr. Herman wanted to know who my attorney was. I told him it was Marion Sibley, and Mr. Herman did not—Mr. Herman was not anxious to talk to Mr. Sibley. He said he had a bad experience. He was going up to see him on another hotel matter, and he had gone up there with some of his workers and Mr. Sibley asked him to leave the workers outside, and when he got into the inside office, he found a Court Reporter there, and for that reason, he would not go up to Mr. Sibley's office.

Q. What happened then? Was there anything else in that conversation?

A. Yes. Mr. Herman said he would meet with him in his office. I said, "Well, I will call Mr. Sibley and see what he has to say and come back to you."

Q. Was that the end of the conversation?

A. That was the end of the conversation.

Q. Did you speak with Mr. Herman again?

A. Yes, I did.

Q. When?

A. I spoke to him again that day.

Q. Who called whom?

A. I called him.

Q. About how long after the first call?

A. Well, I called his office about almost an hour later, [fol. 32] after my call to Mr. Sibley. Mr. Herman was not in his office.

Q. Did you speak with him again?

A. I spoke to him again later in the afternoon.

Q. Had you spoken to anybody from the union prior to that?

A. No, nobody else.

Q. What was the conversation when you spoke with him later in the afternoon?

A. I told him Mr. Sibley would arrange an appointment and I thought it better that they two get together and arrange something for their mutual convenience. Mr. Herman wanted to know if my partner was attending a meeting. I said he wasn't in the building. I believe the conversation ended about then.

Q. Did you speak with Mr. Herman again?

A. I called Mr. Herman up the following morning.

Q. What was the conversation on that morning?

A. I told him my partner had attended a meeting and found out that one of the hotel owners had formed a group, and they were to hire, or engage, rather, a local labor relations counsellor to represent them, and I told Mr. Herman I would go along with this group. Mr. Herman said, "That's fine. I am glad to see you come to your senses. I know this labor relations man. I have confidence in him."

He then said that this labor relations man was to go out [fol. 33] of town for a few days and would be back about Friday.

Q. Is that the end of the conversation?

A. That is about the end of it.

Q. Did you speak with Mr. Herman again prior to the strike?

A. No, that was the end of my conversations.

Q. Did he reach you prior to the strike?

A. No, he did not.

Q. Now, do you recall whether Mr. Herman had on any occasion been in the hotel prior to the strike?

A. Yes, he had been in the hotel on Monday. He came in for lunch with Mrs. Wolfgang.

Q. Did you see him?

A. No, I didn't see him. I was in the office. He talked to my manager. I asked him to go out and see that he was made comfortable.

Q. Now, was there any other conversation prior to the strike?

A. No.

Q. Now, has anybody from the Union established to you that they represented the employees of your hotel?

A. No, sir.

Q. Have any of the employees of your hotel told you that they have authorized the Union to speak for them?

A. No, sir.

[fol. 34] Q. Have any demands been made upon you by the Union to correct any conditions in the hotel?

A. No, sir.

Q. Were there any other conversations at any time prior to the strike with you or Mr. Herman?

A. No, the last conversation was Tuesday.

Mr. Grusmark: That's all; you may inquire.

Cross examination.

By Mr. Brown:

Q. Mr. Grossman, I would like to get the dates of these various conversations down. Maybe you can help clarify those. Now, your picketing started on May 6th, did it not?

A. Yes, sir.

Q. Your first conversation with Mr. Herman was when?

A. The preceding Monday.

Q. What day was May 6th?

A. I believe that was the day of the strike.

Q. That was a Friday?

A. Yes, that was Friday.

Q. So the preceding Monday you had conversations with Mr. Herman?

A. Yes.

Q. What did he tell you he wanted of you, Mr. Grossman?

[fol. 35] A. He wanted to sit down and talk with me.

Q. What did he want to talk with you about?

A. I don't know what he wanted to talk about. I assumed it was about this situation.

Q. Well, it was well known that there was a labor dispute on Miami Beach, involving a number of the hotels, wasn't it?

A. I don't know about any labor dispute. I assumed he wanted to talk to me about labor conditions.

Q. Yes. Now, what led you to assume Mr. Herman wanted to talk to you about labor conditions at the Lombardy Hotel; something he said?

A. No, I don't remember.

Q. You don't remember? You don't remember exactly what he said in that regard; is that correct?

A. He just wanted to sit down and talk to me.

Q. But not about the weather, I assume.

A. I am sure not.

Q. But you don't remember exactly the details of what he wanted to talk to you about?

A. No.

Q. Now, sir, that was on Monday, the first of May; is that correct?

A. If that is the date; yes, sir.

Q. Now, the next day you had another conversation with [fol. 36] Mr. Herman?

A. Yes, sir.

Q. And on that occasion, you asked him to talk to Mr. Sibley?

A. Yes, to arrange an appointment for their mutual convenience.

Q. You talked to Mr. Sibley, didn't you, before that?

A. Yes, sir.

Q. And you instructed Mr. Sibley to act for you?

A. Yes.

Q. He was going to negotiate for you, wasn't he?

A. He was to represent us.

Q. Yes. He was to represent you in what, sir?

A. He was to represent us in any condition that might arise.

Q. Well, what conditions? Certainly not the sale of the hotel—that wasn't mentioned, was it?

A. No.

Q. So it must have been something he was supposed to do for you, wasn't it?

A. Yes.

Q. It was regarding labor problems?

A. If any labor problems came up for discussion, he was to represent me.

[fol. 37] Q. As a matter of fact, Mr. Grossman, you knew labor problems were coming up, didn't you?

A. That was the reason for Mr. Herman's presence in Miami.

Q. That's right; and you knew that was what he wanted to talk about.

A. That's right.

Q. Now, that was on May 2nd?

A. Yes.

Q. Now, the following day, on May 3rd, you called Mr. Herman again, didn't you?

A. I did.

Q. And on this occasion you said to him that some of the other hotels had employed a labor relations counsellor——

A. Going to.

Q. (Continuing) —were going to—and you would go along with them——

A. That's right.

Q. (Continuing) —and let that counsellor represent you?

A. I would go along with this group.

Q. All right; you would go along with the group. Who was this labor relations counsellor?

A. At the time I didn't know who he was.

Q. You have since learned that, haven't you?

[fol. 38] A. I have.

Q. What is his name?

A. Mr. Baumann.

Q. And how do you spell that?

A. I don't know.

Q. Wouldn't that be B-a-u-m-a-n-n?

A. Perhaps, I just don't know.

Q. Now, that was on May 3rd. Now, did Mr. Baumann ever tell you of any conversations he had with Mr. Herman on your behalf?

A. No, he didn't.

Q. He did not. Now, on May 4th, Mr. Herman and Mrs. Wolfgang came to your hotel, didn't they?

A. On Monday, yes.

Q. Oh, on Monday—we are back to May 1st?

A. That's right.

Q. So we get those dates correct, that is May 2nd, Monday. Apparently these conversations started on May 2nd, and again on May 3rd, you suggested Mr. Sibley, and on May 4th, you suggested Mr. Baumann.

Now, going back to May 2nd, after your conversation

with Mr. Herman over the telephone, you learned Mr. Herman and Mrs. Wolfgang went in the hotel?

A. I knew that on Monday.

Q. How did you learn that on Monday? How did you [fol. 39] learn that fact?

A. Someone came and told me—I don't remember who it was—that Mr. Herman and Mrs. Wolfgang were there, having lunch in the hotel, or dinner.

Q. Wasn't it lunch?

A. Lunch, it was in the daytime.

Q. And you sent the manager out to make them comfortable?

A. Yes, I did.

Q. Did he also sit down and have lunch with them, do you know?

A. I don't know.

Q. You know whether he talked to them?

A. Yes, he spoke to them.

Q. Who hires employees of your hotel, Mr. Grossman? Does the manager hire them?

A. To a great extent, the various department heads.

Q. And the manager has general hiring authority, too, doesn't he?

A. Not necessarily. The housekeeper hires our maids and housemen. The maitre d' will take care of the dining room. The department heads work under the manager.

Q. The department heads work under the manager, don't they?

A. Yes.

[fol. 40] Q. Do you know Mrs. Wolfgang's connection with the Union here?

A. I assume she has a connection; I don't know what it is.

Q. You assume that from what information, sir?

A. Well, she was in the office at the time, and she gave me her name. That is the only way.

Q. She was in the office to see you?

A. Not to see me. She was in Mr. Herman's office when I called the second time and Mr. Herman was not in. They connected me with Mrs. Wolfgang.

Q. I see. You know Mr. Al Gonzalez?

A. I met him once, yes.

Q. Where did you meet him, Mr. Grossman?

A. He came into the hotel.

Q. And when was that?

A. I think it was about October.

Q. As a matter of fact, wasn't it in December, 1954?

A. I don't think it was as late as that, no. No, it wasn't then, because——

Q. It was late in the fall of '54?

A. It wasn't in December. I can almost place the time, because our manager was on a business trip, and he wouldn't be away in December. I think it was October. I am reasonably sure it was.

[fol. 41] Q. And what did Mr. Gonzalez come to see you about?

A. He heard I was making contact for the Lombardy to secure some conventions.

Q. Please speak a little louder, Mr. Grossman.

A. Mr. Gonzalez said he heard I was trying to get some convention business for the Lombardy, and I said I was interested, and he said he could get me these conventions if I would go along with the Union.

Q. And what did he mean by "going along with the Union?"

A. I assume he meant to have the house unionized.

Q. Did he say anything about wages or hours?

A. He said—he put the wages to me in this manner—"you have nothing to worry about—you are paying scale now."

Q. What did he say about hours?

A. I don't think any mention was made of hours.

Q. Well, do you remember whether he said anything about hours?

A. I do not.

Q. Well, did you make any agreement with him at that time?

A. No, I didn't. We just had this conversation and I ended it by saying, "Will you let me show you through the building, show you the various meeting rooms and the hotel rooms," which I did.

[fol. 42] Q. But you rejected his proposal, did you not?

A. There was no proposal made.

Q. You just described—I thought you just described the proposal.

A. He just asked me to go along with them.

Q. You didn't regard that as a proposal?

A. Not necessarily. I didn't know what power he had with the Union, how far he represented the particular Union or Local.

Q. Didn't he tell you who he represented when he came in?

A. He told me he was a Union man. I don't recall just how he identified himself.

Mr. Brown: That's all.

Redirect examination.

By Mr. Grusmark:

Q. Mr. Grossman, when Mr. Gonzalez came to see you in October, did he prove to you or establish to you at that time that he represented the employees of your hotel?

A. No, sir.

Q. Have you ever refused to negotiate with Local 255?

A. I have not.

Mr. Grusmark: That's all.

Mr. Brown: That's all.

[fol. 43] The Court: Come down.

Mr. Grusmark: The Plaintiff rests, your Honor.

The Court: The Plaintiff rests. You may proceed.

Thereupon—David Herman was called as a witness on behalf of the Defendant, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Brown:

Q. Will you state your name, sir?

A. David Herman.

Q. What is your relationship to Local 255, one of the defendants in this case?

A. I am the Special Organizer for Local 255, the Hotel Employees Union.

Q. Now, Mr. Herman, directing your attention to the Lombardy Hotel, what connection have you had with any representative of management with relation to negotiations at that hotel?

A. I had quite a number, with three different people.

Q. Will you tell us those, please?

A. Yes. Starting some time in the middle of April, approximately the 16th or 17th of April, soon after the picketing started at the several hotels on Miami Beach, I [fol. 44] had occasion to call Mr. Grossman who was told to me by the employees at the Lombardy Hotel, who were members of the Union.

Mr. Barkdull: I object to what he was told, and move to strike the answer.

The Court: Don't tell the conversation.

The Witness: All right. I found out Mr. Grossman was one of the owners of the Lombardy Hotel, and I therefore called him, and in the first telephone conversation we had, I told him I was the organizer of the hotel employees union. I think by that time—I know that by that time my name was familiar to Mr. Grossman, because he said, "Yes, I have heard about you."

By Mr. Brown:

Q. When was that?

A. About the 16th or 17th of April. The picketing started at the Saxony and Monte Carlo on the 13th and we were just about at that time—the 16th or 17th was when we were trying to get in touch with the other hotel owners to see what we could do to get into conversations about adjusting the complaints of the employees.

I told Mr. Grossman that Local 255 represented practically all of the employees at the Lombardy Hotel, and that I would very much like to sit down and talk with him of the grievances, and the claims for higher wages and shorter hours, and that if he had any doubts as to our claims, that

we represented the majority, that I would urge him and [fol. 45] entreat him to join us in a secret election among the employees, so that they would have a free opportunity to express themselves by secret ballot as to whether or not they wanted to be represented by Local 255, and have Local 255 negotiate on their behalf.

During the course of the conversation, we talked about wages, the fact that they were only paying $5 a day to maids who were working eight, nine and sometimes ten hours a day, and people were working 48 to 50 hours a week, and sometimes, during the season they didn't get a day off for weeks on end, and that there were other grievances pertaining to the working conditions which ought to be adjusted.

This was the general nature of the conversation over a period of several weeks, between the 17th of April and the 6th of May.

Q. How many times did you have discussions with Mr. Grossman?

A. I talked with Mr. Grossman perhaps a dozen times during that period. I would call him on occasion. He would call me. Then I was in and I would call back. He wasn't in, he would call me back, and these conversations went on for the period about the 16th or 17th of April until the beginning of May, when the walk-out took place.

Q. Would you state whether or not Mr. Grossman, at any time, ever expressed any doubt as to your representing some of his employees?

[fol. 46] A. Not to me; he did not.

Q. What comments, if any, did he make on that subject to you?

A. Well, he continued to tell me throughout the conversation that he personally had nothing against unions. As a matter of fact, he sought Union business, that he entertained the American Federation of Musicians officials, and he would very much like to straighten this matter out with the Union, except that he finds himself in the position where the big hotel owners had formed a group, and that if he were to settle with us and break the united front of the Hotel Association, he would probably be ostracized from the community and driven out of business.

Other than that, he said he had no objection to entering into an agreement with the Union.

Mr. Barkdull: Mr. Herman, when did he tell you that?

Mr. Brown: Just a moment; I am on direct examination.

Mr. Barkdull: Can he fix the date?

Mr. Brown: I think he can fix the date.

Mr. Barkdull: That last conversation where you say he entered into a bargaining agreement with the Hotel Association?

The Witness: That last conversation came approximately around the 28th of April, and it came about as a result of an advertisement that appeared in the local newspapers.

By Mr. Brown:

Q. Did you call him or did he call you on that occasion? [fol. 47] A. I called him on that occasion.

Q. Will you tell us what that conversation was?

A. Yes. I said that we had had a number of conversations, which I thought were rather friendly, and leaning in the direction of an adjustment of the dispute, and I was confronted with an advertisement—a full page ad—in every newspaper in Miami and Miami Beach. The ad was an attack against the Union, and an attack against me personally, and certainly showed an attitude of hostility rather than friendship to the Union.

Q. Mr. Herman, I hand you this advertisement which is marked for identification as Defendants' Exhibit 1, and ask you if this is the advertisement to which you refer.

A. Yes, sir; this is the advertisement from the Miami Beach Sun, dated April 27, 1955.

Mr. Brown: We offer this in evidence.

Mr. Barkdull: We object to the introduction of the advertisement as immaterial to the issues involved in this hearing.

The Court: Let me see it. What is the name of the hotel? Is the name on here?

Mr. Brown: The Lombardy; yes, sir.

The Court: Overrule the objection.

(The newspaper ad referred to was thereupon marked, "Defendants' Exhibit A.")

[fol. 48] By Mr. Brown:

Q. Now, Mr. Herman, you say that you called Mr. Grossman's attention to this advertisement on April 28th?

A. Yes, sir.

Q. In a telephone conversation?

A. The next day.

Q. Tell us the details of that conversation.

A. The next day I called Mr. Grossman and referred to this advertisement and referred to our previous conversations. And I said, "How do you account for the fact that here you are telling me you are a good friend of Mr. James Petrillo, the president of the American Federation of Musicians; that you are friendly with Unions; that you employ Mr. Hankoff as your manager, who is a personal friend of the general president of our Union, and then you go ahead and join with the group that is fighting us in the Courts, and you attach your name to an advertisement that is antagonistic to the Union?"

On that occasion he told me, "Look, I am a small fellow here, and I have to play along with the big boys. If I do anything else, they will practically put me out of business, because I have to depend on the overflow I get from the big hotels around me, and much as it is not to my liking, I have to do what I am told to do by the people who are in this Hotel Association group." That was the occasion of that last conversation.

[fol. 49] Q. Now, Mr. Herman, did you have a further conversation with Mr. Grossman subsequent to that?

A. Yes, sir.

Q. When was that?

A. Probably the following day. I think it was the next day.

Q. That would be the 30th of April?

A. That would be probably about April 29th or 30th.

Q. The 29th or 30th of April. Now, what was the gist of that conversation?

A. The gist of that conversation was to the effect that there was now developing a move within the group, in the

Hotel Association, to settle with the Union, instead of fighting the Union, and that they are considering engaging Mr. Baumann.

Q. Are you relating Mr. Grossman's conversation to you?

A. This was the conversation between Mr. Grossman and myself. He told me about this move, and I told him I didn't know this Mr. Baumann until he came down here, hadn't met him until I met him on Miami Beach.

Q. Had you met him prior to that day?

A. Yes, I had since met Mr. Baumann and I talked with Mr. Baumann. I had several conversations with Mr. Baumann.

Q. Prior to the first conversation concerning him with Mr. Grossman; is that correct?

[fol. 50] A. I had met and talked with Mr. Baumann before I had the conversation with Mr. Grossman about Mr. Baumann.

Q. I see. Now, will you continue, sir?

A. I told Mr. Grossman on that occasion—we discussed in general the question all over again. I said, "Now, look, let's see if we can't still get it straightened out. Even the fact of this advertisement, as long as you explained it to me the way you did—let's see if we can get this thing straightened out and avoid the necessity of a walk-out and picketing at your hotel."

He says, "I tell you what you do. You get hold of Mr. Marion Sibley and talk with him." I says, "Look, don't send me to Marion Sibley, because Marion Sibley is engaged for the purpose of fighting the Union. We have had that experience with him, since the first day we started. He is engaged as the attorney to try to prevent the Union from accomplishing its purpose of improving the conditions of the workers. But if you want to talk with me about settling the grievances, then I suggest you get hold of Mr. Ralph Snyder, the owner of the Sea Isle Hotel, who was in touch with this Mr. Baumann, and see if you can make some kind of arrangement to identify yourself with that group, the group that is looking to settle with the Union, rather than the group that is looking to fight the Union."

Q. What did he do about that?

A. Mr. Grossman told me he would do exactly that. He [fol. 51] was going to get in touch with Mr. Snyder, and he was going to see what could be done to become identified with the group that was looking to settle with the Union.

Q. Did you subsequently talk with Mr. Baumann?

A. I talked with Mr. Baumann before and after I talked with Mr. Grossman, yes.

Q. Relate the conversation with Mr. Baumann.

Mr. Barkdull: Wait a minute.

Mr. Brown: After you talked with Mr. Grossman.

Mr. Barkdull: I object to anything Mr. Baumann told him, as hearsay.

The Court: Sustained.

Mr. Brown: It was his agent.

Mr. Barkdull: He hasn't proven any agency here.

Mr. Brown: Mr. Grossman said he appointed Mr. Baumann as his agent to conduct the negotiations.

The Court: Sustain the objection.

By Mr. Brown:

Q. What authority, if any, did Mr. Grossman tell you he had given to Mr. Baumann?

A. He didn't. He only told me he was in conversation with the people who are looking to engage Mr. Baumann as their agent to negotiate. He did not indicate to me that he had given Mr. Baumann the authority to negotiate.

Q. All right. Did you have any subsequent conversations with Mr. Grossman?

[fol. 52] A. Yes. I had a telephone conversation with Mr. Grossman maybe one or two days subsequent to that, and during the course of that, I said——

Q. Will you tell us when?

A. Probably—as nearly as I can remember, it was on the Wednesday, May 4th, or May 3rd, it was on Wednesday of that week, when I talked with him.

Q What was the conversation at that time?

A. I said—the conversation was, I said, "Look, there is no point in discussing this thing over the telephone. I want to come down to your hotel and I am going to talk with you. Let's sit down and see if we can work it out."

Q. What did Mr. Grossman say?

A. Mr. Grossman said he would probably be out of the hotel, but to try and make it anyway, because he said, "We talked over the telephone a whole lot, and I would like to get to see what you look like." It was on that occasion that Mrs. Wolfgang and I went down to the hotel for lunch, in an effort to see Mr. Grossman.

Q. What occurred then?

A. We came into the building along about 2 o'clock, a little bit after 2. I remember it was a late lunch. We announced ourselves—well, our presence was immediately known, and I told the maitre d', the head waiter who received us, that we would like to see Mr. Grossman, as long as we were in the building, we wanted to talk with [fol. 53] Mr. Grossman. About five or ten minutes later, after our order was taken, Mr. Ted Hankoff, the manager of the hotel, came over and joined us at our table. He introduced himself to us and he apologized for the fact that Mr. Grossman was out of the building and unfortunately, he couldn't meet with us, but he would be very happy to sit and talk with us, and he sat through the entire lunch, for about an hour or an hour and ten minutes, while we ate and discussed the problems of the hotel.

Mr. Barkdull: Now, your Honor, I move to strike the last part of the answer where they discussed the problems of the hotel, as being hearsay.

Mr. Brown: Your Honor, this is a corporation, and this is the manager of the corporation that owns the stock. We are endeavoring to prove that there were conversations with a responsible official of the hotel concerning the negotiations and surely the manager would be a responsible official of the corporation, whose testimony can be repeated here, by Mr. Herman.

The Court: Overrule the objection.

By Mr. Brown:

Q. Tell us what that conversation was, Mr. Herman.

A. It was about to the same effect, the wages that are being paid to the workers of the Lombardy Hotel coming under our jurisdiction: the disparity between the wages

[fol. 54] being paid in Miami Beach, as against the hotels outside of Miami Beach.

Mr. Ted Hankoff proved to be an intelligent conversationalist. He is very familiar with our International Union. He told me he just came back from a trip that took him as far as Cincinnati, Ohio, and while there, he had occasion to talk to our general president, Mr. Miller, and he told me that as far as the Lombardy Hotel is concerned, they would welcome an opportunity—it would be the biggest blessing for them—if the Union and the hotels got straightened out and adjusted the wages.

Q. Mr. Herman, was there any conversation between you and Mr. Hankoff as to whether or not you represented any of his employees?

A. Yes.

Q. What was that conversation?

A. There was this conversation with all employers—including Mr. Hankoff: "Look, we represent the majority of your employees. If you have any doubt as to that, we would be very happy to submit to a secret ballot election, so that the employees can express themselves by democratic procedure."

Q. Did he express any doubt that you represented any of his employees?

A. On the contrary, he said, "I know you represent the employees"—because the waiter or waitress who waited on me, the maitre d', the head waiter, the bell man and doorman came to greet me and the way they talked with me and [fol. 55] greeted me, he didn't, for one moment, question that we represented all of the employees.

As a matter of fact, if there was a question, they wouldn't even talk to me. They didn't question that, and I always make the offer, in every conversation with every employer, we make the claim we represent the employees, and then we make the offer that if they question our claim, we are willing to submit to a vote by secret ballot to determine whether or not our claim is correct.

Q. Did Mr. Hankoff agree that you did represent his employees?

A. Yes, he said so. He said, "I have no doubt that you represent the employees."

Q. Now, Mr. Herman, directing your attention to the employees of the Lombardy Hotel——

Mr. Barkdull: Your Honor, for the purpose of the record, to keep the record straight, I would like to move to strike all the testimony to his conversation with Mr. Hankoff, the manager, on the ground that there has been no authority shown that Mr. Hankoff could enter into any negotiations.

The Court: I think that was just a social experience on the part of both of them.

By Mr. Brown:

Q. What categories of employees do you represent at the Lombardy Hotel?

A. By the jurisdiction given to the Hotel and Restaurant [fol. 56] Employees International Union, by the American Federation of Labor, we represent the employees in the catering departments, dining room, kitchen, bar, housekeeping departments, and the front service personnel, elevator operators and bellhops.

Q. Well, as a matter of fact, by virtue of actual representation and authorization by the employees, what categories do you represent?

A. The categories I have just enumerated.

Q. I see. In what manner was that representation achieved?

A. By the employees signing authorization cards, authorizing the Union to represent them in collective bargaining, by the enrolling into membership in the Union, and also filing a formal application for membership, and on the payment of the initiation fee, and obtaining the membership book in the Union—both, or either.

Q. How many employees are in the categories you enumerated in the Lombardy Hotel?

A. Seventy.

Q. And how many of those have designated Local 255 as their bargaining representative?

Mr. Grusmark: I object to that. That is not the best evidence.

Mr. Brown: I will rephrase the question.

By Mr. Brown:

Q. Mr. Herman, do you, of your own knowledge, know [fol. 57] how many employees have so designated Local 255 as their bargaining representative?

A. Yes.

Q. And how many are there?

Mr. Grusmark: Same objection; it is not the best evidence. The cards are.

The Court: Overrule the objection.

The Witness: There are 51 authorization cards, I believe, from the employees at the Lombardy Hotel, designating the Union as its collective bargaining agent.

By Mr. Brown:

Q. Now, Mr. Herman, you told us of your conversations with Mr. Hankoff. Were there any subsequent conversations with Mr. Grossman?

A. Yes, there was a subsequent conversation with Mr. Grossman before we—before the employees walked out.

Q. When was that conversation?

A. That must have been on Thursday.

Q. And what was that conversation?

A. That conversation was in the nature of a telephone call from me to Mr. Grossman. I says, "Look, this thing is getting too hard for me to hold back. The employees want to know from me—they know we have been talking, they know I have been in the hotel and I had a meeting with Mr. Hankoff—they want to know are you going to agree to the requests for improvements in their wages, or are you going to submit to an impartial election, if [fol. 58] you challenge our representation claim."

He says, "I am sorry, Mr. Herman, I am not free to act. I am not free to answer you one way or the other."

I says, "But I am free to do what I think will best serve the interests of the people that I represent."

He says, "You just go right ahead and do what you think you ought to do."

Q. Did he indicate why he was not free to act in this matter?

A. He indicated it was for the same reason, that he

became attached to a group of big hotel owners, whose virtual prisoner he was, and if he went contrary to their wishes, he would find himself without any business in that part of Miami Beach where his hotel is located, because he is surrounded, or he is immediately adjacent to the three largest hotels in that area who are a part of this same group, the Casa Blanca, the Monte Carlo, and the Sherry Frontenac, and who, according to him, keep him supplied with the overflow business from those hotels.

Q. As a result of that answer by Mr. Grossman, what happened? Did you make that known to your membership?

A. Exactly what happened, I conveyed this information to the people on the staff of Local 255, who were in touch with the Lombardy workers. I told them this was it, that Mr. Grossman refused to give in to any requests, and from then on—the next day they walked out and established the picketing. That was on Friday, May 6th.

[fol. 59] Mr. Brown: You may inquire.

Cross examination.

By Mr. Barkdull:

Q. Mr. Herman, let me make sure I understand you. I know you wouldn't want to get this record confused. You had conversations with Mr. Grossman relative to wages and hours some times during the middle of April?

A. Yes, sir; approximately on the 16th or 17th of April.

Q. You had a number of conversations with Mr. Grossman up to the time of the strike, involving wages and hours?

A. Yes, sir. Our conversations with Mr. Grossman started out with wages and hours. I called him as the representative of the Union, to discuss the wages and hours of his employees.

Q. Now, when Mr. Grossman asked you to talk with Mr. Sibley, you indicated to him it would be fruitless to talk with Mr. Sibley; is that correct?

A. Yes, sir; I said I will only talk to Mr. Sibley if what you have in mind is to provoke a fight, that was the way it was provoked at the Sea Isle Hotel, when Mr. Sibley

represented Mr. Ralph Snyder, when Mr. Sibley had a stenographer there, present, and the workers were insulted, because they refused to meet with the workers.

[fol. 60] I said, "If you want that kind of provocation, then send me to Mr. Sibley, and you can be pretty sure you will have a picket line very soon thereafter." I prefer to negotiate these things with you and try to reach a settlement. Mr. Grossman took that under advisement, and he said, "I will let you know. I have to talk to Mr. Jamison about it."

Q. Subsequent to that conversation, which was some time in the first week of May, you had dealt with Mr. Sibley on behalf of other hotels and not involved in any strikes, haven't you?

A. Sir, that conversation was not in the first week of May. That conversation was in the middle of April.

Q. You indicated upon examination by Mr. Brown that it was on a Monday or Tuesday prior to the strike that he told you to take the matter up with Mr. Sibley. Do you wish to correct that statement?

A. No, I did not indicate that at all. That was Mr. Grossman's testimony. I said it was some time between the middle of April and the beginning of May.

Q. Subsequent to that time when you told him that, you met with Mr. Sibley, didn't you?

A. I met with Mr. Sibley, yes, sir.

Q. Now, you told us during the middle of April that Mr. Grossman told you he wanted you to meet with Mr. Sibley, is that correct?

[fol. 61] A. Correct.

Q. When did you meet with Mr. Sibley with reference to the Sea Isle and call the strike?

Mr. Brown: I object to that question.

The Court: I think he can test his memory, when he had these conversations. Go ahead.

The Witness: The strike at the Sea Isle was called, I believe, on the 20th of April, the 20th or 22nd of April.

By Mr. Barkdull:

Q. So it was not the middle of April that Mr. Grossman told you to talk to Mr. Sibley, was it?

A. It was in the middle of April, when I discussed the issues with Mr. Grossman, about the recognition of the Union and about the wages and hours. Exactly when the conversation took place with respect to Mr. Sibley, it could have been any time after the 22nd of April.

Q. Now, these authorization cards you testified to here—the employees of the Lombardy Hotel have designated you to represent them, or act on their behalf, have you exhibited them to Mr. Grossman or Mr. Jamison?

A. No, sir. They never questioned it. They accepted my claim that we represented the majority of the employees. I offered to submit to a secret election and to prove by any other means they desire that our claim to a majority representation. They never challenged it.

Q. Mr. Herman, I believe you testified that the strike [fol. 62] was called, or the walk-out, as you phrased it, at the hotel partially because of this ad which appeared in the paper and has been introduced in evidence as Defendants' Exhibit A, and also because of the indication by Mr. Grossman that he could not do business with you?

A. No, sir. I testified to no such thing. The strike was called—the walk-out was called because Mr. Grossman, on Thursday, May 5th, told me he was unable to, or unwilling to discuss the issues that we presented to him with respect to the wages and other conditions we wanted to discuss. That was his final answer. He said, "I am sorry; I can't talk to you about it."

Q. Mr. Herman, are you familiar with the article carried in the Friday evening edition on May 6, 1955, relative to the strike at the Lombardy Hotel? I have a copy here.

A. I have a copy here, too, yes.

Q. Are you familiar with the statement?

A. Yes, sir.

Q. I call your attention to the 5th paragraph, underneath the bold type which says "Herman retaliates. Dave Herman, Special Union Organizer, said that the Lombardy Hotel was called out in retaliation for the Court order." Are you acquainted with that statement?

A. I read it in the paper, yes.

Q. Did you make it?

[fol. 63] A. No, sir.

Q. The retaliation referred to there for the Court order, was the injunction in the Casa Blanca case, was it not?

A. The retaliation referred to for the Court order, sir, is a figment of the imagination of a romantic newspaper reporter.

Mr. Barkdull: Your Honor, I would like to offer into evidence this page.

Mr. Brown: I object to it, your Honor.

The Court: You can offer it for identification.

(The document referred to was thereupon marked, "Plaintiffs' Exhibit 1-A for Identification.")

By Mr. Barkdull:

Q. Now, Mr. Herman, throughout the past five or six weeks, we have both been in Court on various occasions on various cases which have been heard before other divisions of this court?

A. Sir, the only other association in court previously was on Saturday night, before Judge Giblin. If I have ever seen you before that, I have no recollection of it.

Q. All right; it created no impression on you. Now, were you before the Hon. Messrs. Carroll, Cannon, Crawford, and Floyd, on April 28, 1955, when the hearing was held in the south courtroom on this floor?

A. I was; yes, sir.

[fol. 64] Q. Do you recall the question being asked you by Mr. Sibley—this is Page 42, of the Saxony transcript—where you stated in answer to the following question:

> "Q. Mr. Herman, are you familiar with this article quoting you in the Miami Daily News, on Sunday, April 24th, 1955, under the by-line of Haines Tolbert?
>
> "A. I read the article."

Do you recall making that statement, sir? Was that your answer to the question?

A. Yes, I do.

Mr. Brown: Your Honor, I object to this line of testimony. All of this occurred prior to the events complained of in this complaint, and has no bearing on this action.

The Court: Overruled.

By Mr. Barkdull:

Q. I might call your attention, for your counsel's benefit, to a statement that was contained on Page 57 of this record —on Page 43 of the transcript that night, when you were being questioned by Mr. Brown, your counsel, and he said:

> "Q. You were asked about a conversation with a reporter, Mr. Haines Tolbert, of the Miami Daily News. What was your conversation with him?
>
> "A. He asked me, among other things, specifically with reference to the questions that Mr. Sibley asked, [fol. 65] this newspaper reporter asked me 'Well, what are the issues, the economic issues and the working conditions that are involved here?' And I explained to this reporter, which he either deliberately or inadvertently misunderstood, I said, 'At this present moment, there are no economic issues involved. This, at the present moment, is only a dispute of recognition of the Union. If and when the Union is recognized, then we will enter into the discussion of wages, hours and conditions of employment under which these people work—'"

Mr. Brown: I would like to enter an objection to the reading of this record, which pertains to another case.

Mr. Barkdull: Let me finish my statement. I can test his credibility by this.

The Court: Let him state his objection.

Mr. Brown: Your Honor, the testimony he is reading from is with regard to questions and answers pertaining to other cases, to five other hotels. At that particular time there had been a history of negotiations with those hotels, and there had been a history of the breaking down of the negotiations, and it concerned a walk-out at those hotels. All that occurred several weeks before the dispute arose or even came to a climax at the Lombardy Hotel, so that the testimony that is being read to you is intended to give [fol. 66] you the impression that these events recited by Mr. Herman in the other five or six hotels have some bearing on this particular hotel, when it wasn't even involved,

and at that time the relationship between Mr. Herman and the Lombardy Hotel was still friendly.

None of these facts apply to any hotels other than those involved at that time. On that ground, I think that the reading of this entire testimony is completely immaterial and is prejudicial.

The Court: Overrule the objection. Go ahead.

By Mr. Barkdull:

Q. (Continuing) —"Now, at this moment, I said, 'This is a principle fight on constitutional issues, and not a humanitarian fight on the immediate working conditions.' The way he saw fit to print it was as far away, I said, as anything could possibly be."

Did you make that statement?

A. If the record shows that I made that statement, I must have made it. As you said, we have been in many courts together since then, and I have made many statements.

Mr. Barkdull: I thought you only recalled one. That's all.

Redirect examination.

By Mr. Brown:

Q. You have been handed a copy of the Miami Daily [fol. 67] News, dated Saturday, May 7th or 6th. I hand you this copy of an excerpt from the Miami Herald, and ask you whether or not you made the statement which is attributed to you in this article? This statement—"Asked if the picketing at the Lombardy was the Union's answer to Judge Cannon's decision, Herman replied, 'No, the workers just walked out.'"

Did you make that statement?

A. I did. I made it to Bryan Donaldson, who happens to be in the courtroom at this moment.

Q. I ask you again, sir, unequivocally, was the walk-out at the Lombardy Hotel due to the fact that Mr. Grossman refused to negotiate with you, as you have related?

A. Yes, sir; that was the one and only reason.

Mr. Brown: That's all.
Mr. Barkdull: No further questions.
The Court: Anything else?

Thereupon—Robert Dominguez was called as a witness on behalf of the Defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name, please?
A. Robert Dominguez.
Q. And your address?
[fol. 68] A. 2361 Northwest 57th Street.
Q. What was your last place of employment, Mr. Dominguez?
A. Lombardy Hotel.
Q. In what capacity?
A. Room service waiter.
Q. And how long had you worked at the Lombardy Hotel?
A. Since August, 1954.
Q. Are you a member of Local 255, Mr. Dominguez?
A. I am, sir.
Q. When did you join Local 255?
A. The early part of April, I believe it was.
Q. The early part of April, 1955?
A. Yes, sir.
Q. Did you authorized (sic) Local 255 to act as your collective bargaining agent?
A. I did, sir.
Q. Did you sign a card requesting the Union to negotiate on your behalf with your employer on all matters dealing with wages, hours and conditions of employment?
A. Yes, sir.
Q. I show you a card, Mr. Dominguez, and ask you is this an exact copy of the card you signed?
A. Yes, sir, it is.

[fol. 69] Mr. Gettler: I would like to have this marked for identification.

(The card referred to was thereupon marked, "Defendants' Exhibit A-1 for Identification.")

By Mr. Gettler:

Q. When was that card signed, Mr. Dominguez?
A. The early part of April. I can't remember the exact date.
Q. The early part of April, 1955?
A. Yes.

Mr. Gettler: I will offer the card in evidence, your Honor.
Mr. Barkdull: Your Honor, I don't think this is the best evidence.
Mr. Gettler: I asked him if that is an exact copy of the authorization which he signed, and he says yes, it is.
Mr. Barkdull: The best evidence would be his own card.
Mr. Grusmark: That is no predicate for a copy.
Mr. Gettler: The best evidence is his own statement that he signed it.
The Court: The best evidence is the card he signed. Sustain the objection.

By Mr. Gettler:

Q. Mr. Dominguez, did you participate in an election ——

[fol. 70] Mr. Barkdull: I object to that question, until he identifies what time and where and when the election was.
The Court: Let him finish, please.

By Mr. Gettler:

Q. Did you participate in an election on May 25, 1955?
A. Yes, sir.

Mr. Barkdull: If it please your Honor, I object to the question as being totally immaterial to this case. The election on that date is immaterial to the walk-out.
The Court: I don't know——

By Mr. Gettler:

Q. You did participate in such an election?

A. Yes, sir.

Q. And was it a secret ballot election?

A. Yes, sir.

Q. Is this an exact copy, Mr. Dominguez, of the official ballot that was given to you in that election?

A. It is; yes, sir.

Q. And the question for the election, Mr. Dominguez, was, "Do you authorize the strike in your hotel for the purpose of gaining recognition of Hotel Employees Union 255, AFL, as your collective bargaining agent, so that it can negotiate on your behalf for higher wages, lower hours, and welfare benefits, and such other improvements in your working conditions as you authorize?"

[fol. 71] A. Yes, sir.

Q. And how did you vote, Mr. Dominguez?

A. Yes.

Mr. Gettler: I will offer this exact copy of the ballot in evidence, your Honor.

Mr. Barkdull: Same objection.

The Court: Same ruling. Let me ask a question before I rule.

When did you say this election was?

The Witness: Last Wednesday.

The Court: Where were you working last Wednesday?

The Witness: I wasn't working.

The Court: You weren't working at all?

The Witness: No, sir.

The Court: O. K. Sustain the objection.

By Mr. Gettler:

Q. Mr. Dominguez, when did you leave your work at the Lombardy Hotel?

A. The day the strike was called; on the 6th, it must have been a little after 2.

Mr. Gettler: That's all.

Mr. Barkdull: No questions.

The Court: All right; step down.

Thereupon—HARRY BRANDEIS was called as a witness on behalf of the Defendants, and having been first duly sworn, [fol. 72] was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and address, please?
A. Harry Brandeis, 610 8th Street, Miami Beach.
Q. Where was your last place of employment, Mr. Brandeis?
A. The Lombardy Hotel.
Q. In what capacity were you employed there?
A. In the laundry, as a laundry worker.
Q. How long had you been so employed?
A. I came to the Lombardy in March the first, 1954.
Q. Are you a member of Local 255?
A. Yes, sir.
Q. When did you join Local 255?
A. Approximately in August, 1954.
Q. Did you designate Hotel Employees' Union Local 255, as your collective bargaining agent?
A. Yes.
Q. When did you do that?
A. As soon as I joined the Union, of course.
Q. Which would be in August, 1954?
A. Yes, sir.
Q. Did you request Local 255, to negotiate for you, on your behalf with your employer on all matters dealing [fol. 73] with wages, hours, and conditions of employment?
A. Yes, sir.
Q. When did you so request the Union to do that?
A. I think it was at a meeting approximately a week before we walked out. There was a meeting in the Union. They told us we have—that is when we gave this designation.
Q. Did you leave your work at the Lombardy Hotel on May 6th?
A. Yes, sir.
Q. Why did you do so?
A. Well——

Mr. Barkdull: I object to why he did, your Honor; that calls for a conclusion.

The Court: Sustain the objection.

Mr. Gettler: That's all.

Mr. Barkdull: No questions.

The Court: Anything further?

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Gettler: One further question, your Honor. Mr. Brandeis, on May 25th, 1955, did you participate in a strike election?

Mr. Barkdull: I object to the question. The man has already testified he terminated his employment at the Lombardy prior to that date, and it is immaterial.

The Court: Sustain the objection.

Mr. Gettler: It is clear from the evidence that this man [fol. 74] walked off the job.

The Court: I don't know what he did, if he walked off. He isn't on the payroll, is he?

Mr. Gettler: No, but when an employee remains away from his work because of a dispute with his employer, that does not terminate his employment. For all purposes, he is still employed.

The Court: You don't let him go out and have a vote some place. Sustain the objection.

Mr. Gettler: I am proffering the answer that if the witness were permitted to testify he would testify he did, and the witness would also testify, if permitted to answer, that he voted for a strike.

The Court: Deny the proffer.

Mr. Gettler: That's all.

Mr. Barkdull: No questions.

Mr. Gettler: Your Honor, I have quite a number of witnesses who will testify, each one exactly as these last two witnesses have testified. There has been no cross examination of either one, and in order to expedite the matter, if it is agreeable to counsel, I could simply name them, or have them step forward and be sworn, and stipulate that each one so called would testify exactly as the previous two witnesses.

Mr. Barkdull: I will agree to that.

The Court: How many are there? Call off the names.

[fol. 75] Mr. Gettler: Everyone from the Lombardy Hotel, step forward, please.

You want me to actually name them, your Honor?

The Court: I think he wants the names in the record.

Mr. Barkdull: I will just take a count. No, I will have to get their names.

The Court: Mr. Reporter, step to the rail and take the names of these people for the record.

(The following names were given to the Reporter by the individuals assembled at the rail: W. J. Walker; Graciela Contreras; Elizabeth L. Winn; Elizabeth C. Richter; John E. Mills; Stella Miller; C. Kings Wood; Anna Adams; George Shoemaker; Antoinette Demilio; Lucille Pasiuk; Rose Yeshovitz; Mary Turnbull; James E. Hahn; Floyd E. King; Harry Brandeis; Harold Richards; Helen Meyers; Joseph Crowley; Kay Schumaker; Laura Bremer; Helen Lavecky; Nita Satterly; Robert Dominguez; Orlando Carrandi; Frank Grupeter; Marie McBee; Dorothy Connolly; Jean Schurgot; Joseph Schurgot; Louise Rozenas; Louis Turi, Glen Hering; and Alma Lekberg.)

Mr. Gettler: Counsel for defendants and counsel for plaintiffs stipulated that in the event the above named [fol. 76] persons who are present in the courtroom, numbering 37, if they were called to testify, would testify in the same manner and to the same effect as the two witnesses immediately preceding, namely Mr. Robert Dominguez, and Mr. Harry Brandeis.

Mr. Grusmark: We are stipulating to the proffer of these witnesses as being on the same basis as the other two and the objection would be sustained.

Mr. Gettler: On the same basis as the other two previous witnesses.

Mr. Barkdull: We agree to that.

Mr. Gettler: The defendants rest.

Mr. Barkdull: The plaintiffs have no rebuttal to offer.

The Court: We will take a short recess.

(A short recess was thereupon taken, after which the following proceedings were had:)

Mr. Barkdull: At this time, does your Honor desire to hear argument?

The Court: Yes, sir; go ahead.

STATEMENT ON BEHALF OF PLAINTIFF

Mr. Barkdull: All right, sir. I would like to preface my remarks with the following: As indicated at the opening of this hearing, the plaintiffs in this cause will travel upon the Opinion of the Supreme Court in the Saxony case, which was rendered on last Friday. I believe your Honor has been supplied with a copy of that, and we draw [fol. 77] your attention to two portions of that opinion, the first being the second paragraph on Page 3, wherein the Court set out the following:

> "Without doubt a labor organization has the right to engage in peaceful picketing of an employer's premises, when predicated upon the refusal of the employer to recognize and negotiate with the Union as the representative of such employer's employees. In order for such picketing to be lawful, the Union must establish that the employees have chosen it as their representative. (Treasure, Inc., v. Hotel and Restaurant Employees and Bartenders Union, 72 So. 2nd, 670.)"

Continuing:

> "And the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations. See North and East Texas Motor Lines, Inc. versus Dickson, 219 Southwest 2d, 795."

Right there we would like to point out to your Honor that it is our construction of this paragraph, and we think it is obvious from the wording that these three conditions must be met by a Union before they can create picketing and bring economic pressure on an employer.

They say here that in order for the picketing to be lawful, the Union must establish its representation that it [fol. 78] represents the employees involved. They must

inform the employer of the object to be accomplished by the picketing.

Certainly if there is no lawful object, there can be no lawful picketing. Thirdly, it must afford to the employer a fair opportunity to engage in negotiations. In the case at Bar, it is admitted by the testimony of the defendants' witness, Mr. Herman, that he never gave one name to the employer of who he represented.

He further testified that he did not want to meet with the employer's representative; and I say to your Honor, that that testimony of Mr. Herman, the representative of this defendant Union, shows that the Union was not attempting in good faith to negotiate with this employer, even if they had represented the employees.

I say that the Supreme Court of Florida has placed the burden on the Union, to show, before they can put a picket line up, that they have shown the employer that they represent his employees, and once they do that, they have a perfect right to make any legitimate demand for improvement of working conditions on the employer, and when they make that legitimate demand, the employer must either meet them or negotiate with them, or face a strike.

They haven't shown that they have made any demand in this case. I will say this for Mr. Herman, that his testimony has certainly improved as the Supreme Court [fol. 79] renders its opinion, and he attempts to get within it, but when he got on the stand the first time, he wasn't interested in wages and hours. He was interested in exactly what he came down here to get, and that was a contract with these employees, so he could reap in the profits and take them back up North, where he came from.

Now, your Honor, continuing further with this opinion, on Page 6, the first and second paragraphs thereof, read as follows:

> "Since according to the allegations of the sworn complaint, the placards carried by the pickets contained false information, it cannot be said that they conveyed information concerning the facts of a labor dispute."

The information contained on the placards in the Saxony suit was identical with the information contained on the placards in this case, and that is, "This hotel refuses to negotiate."

> "It is therefore obvious that the purpose of the picketing is unlawful. As we said in the case of Miami Typographical Union No. 430, versus Ormerod: 'When picketing is carried on to further an unlawful purpose, as was correctly determined in this case, it loses its characteristic of free speech, which is guaranteed by the First Amendment to the Federal Constitution, [fol. 80] and it becomes, as was stated by Professor Gregory, in his work on Labor and the Law, cited with approval by the United States Supreme Court in the case of Hughes versus Superior Court of the State of California, simply a species of coercion, traveling under the guise of speech, for the purpose of enjoying constitutional immunity.'"

I state to your Honor that their witness, Herman, has shown he broke off the negotiations and he puts on the placard that this hotel refuses to negotiate, and when he got on the stand here, he testified that the hotel man told him, "You go and talk to Marion Sibley, he will negotiate for us." Then he says he wouldn't go.

Now, does that placard represent a true statement of the condition that he has testified to? I say it does not, your Honor, and for that reason this picketing should be enjoined.

Now, they all go put on witnesses here relative to an election. It was obvious to your Honor, and I was amazed that they would attempt to validate a strike which took place on the 6th, with an election that took place on the 25th, when the employees admitted they had quit on the 6th.

You can't walk out on a man's job and then vote—you can't say I am going to vote now and it is for last month. You got to vote before you walk out. The Florida Statutes require that you got to first vote, and then you may cease work.

[fol. 81] I say to your Honor, that that election is completely immaterial to any issues in this case, when they put the strike line up on May 6th, and in the face of the Supreme Court's opinion on last Friday, we are entitled to the temporary relief prayed for.

STATEMENT ON BEHALF OF DEFENDANTS

Mr. Brown: If the Court please, we have shown, in line with the Supreme Court's decision, that certain facts existed in our case.

We have shown that there has been no dispute on the point that there is picketing, and it is peaceful, and the supreme Court has said that, "Without doubt a labor organization has the right to engage in peaceful picketing of an employer's premises predicated on the refusal of the employer to recognize and negotiate with the Union as the representative of such employers' employees."

Now, the Court breaks down in precise sentences the rules of the game. They are three. The Court said that in order for the picketing to be lawful, the Union must establish that the employees have chosen it as their representative.

Did the employees choose the Union as their representative? Thirty-seven employees testified that prior to the May 6th walk-out, they had chosen the Union as their representative. So there is no question on that. There is no rebuttal on that point, that 37 said they chose the Union prior to May 6th.

Now, the second rule which the Supreme Court laid [fol. 82] down was that we must inform the employer of the object to be accomplished by the picketing, and the object had been very carefully detailed by Mr. Herman, who said that on numerous occasions in conversations with Mr. Grossman, and also Mr. Hankoff, he discussed his object in contacting them, which was relative to working conditions.

The Court: I told you I thought that conversation he had with Mr. Hankoff, was more social for each of them, more than anything else, it was just a social experience for both of them.

Mr. Brown: Most of the conversation was with Mr. Grossman, one of the owners of the corporation, and in the conversation with Mr. Hankoff, the labor matter was certainly discussed.

There were repeated telephone conversations beginning about the 17th or 18th of April, and continuing up until the day before the walk-out on May 6th. Now we come to the question was there a fair opportunity to the employer to engage in negotiations?

I have just read the three rules of the Supreme Court. In this case the employer knew that we represented the people; there was no argument on that point. Mr. Grossman admitted that the Union represented some of his people. It was a well-established fact; there was no particular argument on that. There was no question about the fact that he had an ample opportunity to negotiate, [fol. 83] and there was no question about the fact that the Union wanted, and still wants, a settlement on wages and hours.

Conclusive of the point that he had a fair opportunity to engage in negotiations, is Mr. Grossman's statement to Mr. Herman that—this is when the breakdown came about—he could not negotiate because he was under pressure from the other hotels not to sign or reach any agreement with the Union, and his statement that the Union was free to do as it pleased.

That was the end of the negotiation, and that was Mr. Grossman's statement. I think the record bears out that Mr. Herman was persistent in making so many attempts in trying to press the actual negotiations and solution of this problem.

Now Mr. Sibley was designated by Mr. Grossman as his first choice as negotiator. Mr. Herman raised some objections. Mr. Grossman, who was a free agent, informed Mr. Herman that they were appointing Mr. Baumann, and they would go along with him. He didn't have to accede to Mr. Herman's request and it shows that there was no breaking off of negotiations by Mr. Herman over Mr. Sibley.

As the record indicates, we had very significant negotiations which took place thereafter, and Mr. Grossman's own

testimony that he selected Mr. Baumann and that subsequently, according to the testimony, the negotiations were broken off.

I wish to call to your attention the fact that a great deal of Mr. Herman's testimony is unrebutted in any way. [fol. 84] They had an opportunity to rebut his testimony, as far as the conversations with Mr. Grossman and Mr. Herman said what took place between them and his testimony with respect to those conversations stands unrebutted.

We have met in clear and precise terms the conditions imposed by the Supreme Court, and we are entitled to proceed with the publication of our dispute.

What are we doing? Walking up and down in front of a hotel and informing the public as to what occurred. That is simply that this hotel refuses to negotiate. Is there any question about this hotel refusing to negotiate? They could negotiate at any time and force us to take the signs off, if they wanted to. All they have to do is negotiate and we can't say they refuse to negotiate.

As to the strike vote, the Supreme Court didn't say that a strike vote is necessary, so the strike vote is of no pertinent application to the issues in the case we have before us here.

With regard to the question of showing that we represent the people, your Honor, the unrebutted testimony shows that the people there, the waiter that came to the table, were known as Union members, and spoke to Mr. Herman in the presence of the manager, and it was well known throughout the hotel.

Now, it is not necessary, nor does the law say that we have to prove to their satisfaction that we represent these [fol. 85] people. It must be a true fact; we either do represent them or we do not. If we represent these people, we are entitled to negotiate for them.

The law itself provides that every employee shall have the right to self organization, to form, join or assist labor organizations to bargain collectively through a representative of their own choosing.

The Court: Let me ask a question here: Suppose you had 100 people and everyone of them belonged to a differ-

ent organization, or when they joined the Union, they appointed some different person to represent them, would the owner be required to negotiate with 100 different people? Doesn't that statute mean that they have—the employees of a particular organization have a right to choose a bargaining agent?

Mr. Brown: This statute means any particular employee can choose any particular Union to represent him.

The Court: Any particular Union?

Mr. Brown: Yes, your Honor. As a matter of fact, that question was presented in the Supreme Court just yesterday, and Mr. Barkdull was present when this little colloquy occurred. Inadvertantly, (sic) the suggestion was made that Justice Hobson had said that we are required to have a majority of the employees; that he said that in this opinion, and he corrected him.

"Absolutely not," he said, "you won't find that in my opinion. I didn't say that."

[fol. 86] The Court: It says every employee can have a different bargaining agent?

Mr. Brown: Your Honor, that is the practice today. Let me cite examples for you. In a large hotel, you will have engineers; they have their own Union, as a rule. This is the practice throughout the United States. They will have electricians, they have their own Union, too.

They have carpenters; they have their own Union. There are firemen, musicians——

The Court: You are only talking about one group here.

Mr. Brown: Well, I am talking about the employees of the hotel. In this hotel today, there are a number of unions represented, and each employee may designate which one he wants, and actually they do so according to crafts. The craft concerned here is composed of culinary workers and the housekeeping departments, generally speaking.

These employees in this particular group have designated the Hotel and Restaurant Union. This Union is a Union of some 430,000 members throughout the United States and all over the country. This is the method of operation. But this particular Union does not represent electricians or engineers or musicians or carpenters or

painters and so forth that are found in these hotels. They are represented by their own Unions.

[fol. 87] And so it is in all crafts, and that is recognized by the law of the United States. Even the Taft-Hartley Act was amended to provide that instead of one industrial unit, such as you may have in the United Automobile Workers fields, where everybody in an automobile plant belongs to that one unit, the Taft-Hartley Act was amended to provide that each craft my (sic) break away from the big unit and have its own single unit, and a separate election, and it was done at the instance of one of the smallest unions in the country, the pattern makers.

They argued for that amendment of the Federal law, because everywhere in the country, they are a small group, and a big plant employing 5,000 workers might have three pattern makers. They wanted their own Union, and so the Federal law recognized that.

The Court: The pattern makers, after they organized—didn't they select their own bargaining agent?

Mr. Brown: Yes, in each case they did.

The Court: Everyone of the pattern makers didn't employ a separate agent?

Mr. Brown: No, the pattern makers would all vote as a unit.

The Court: That is what I asked you here.

Mr. Brown: That is our situation, your Honor.

The Court: This is all one unit.

Mr. Brown: Ours is all one unit of hotel and restaurant [fol. 88] employees.

The Court: That is what I said.

Mr. Brown: We do not take these other affiliated crafts in.

The Court: I understand, but even your unit should be led by a majority selecting a bargaining agent.

Mr. Brown: Well, your Honor, we have proved that. There is undisputed testimony here——

The Court: You have proved it and I know it to be a fact that every time a man joins a Union, he appoints the Union as his bargaining agents, whether he works at the Lombardy Hotel, the Roney Plaza, or the Saxony, doesn't he?

Mr. Brown: Yes, sir.

The Court: He doesn't do it as an employee of the hotel.

Mr. Brown: Oh, yes; when he joins the Union, he appoints the Union as his bargaining agent.

The Court: As a Union member.

Mr. Brown: As an employee of that particular hotel.

The Court: But he designates them as a Union member, is that true?

Mr. Brown: That is correct.

The Court: You have one boy who testified that he happened to be employed at that place at the time he joined the Union.

[fol. 89] Mr. Brown: Yes, sir.

The Court: He testified he went to work in August and he joined the Union in April.

Mr. Brown: Yes, sir, that's right. He joined in April.

The Court: So he went to work as a bellhop and he happened to be employed at that place.

Mr. Brown: That's right.

The Court: But if he left there and went to work at some other hotel, they would still be his bargaining agent.

Mr. Brown: That is correct, unless he dropped out of the Union.

The Court: That is one of the requirements for membership, isn't it, to appoint the Union as his bargaining agent?

Mr. Brown: Yes, you are right, your Honor, that is a general requirement of the Union; yes, sir.

The Court: There is nothing wrong with that.

Mr. Brown: That is correct.

The Court: I am talking about a component group in a particular hotel. Do they have a bargaining agent?

Mr. Brown: Yes, they have the Union as their bargaining agent.

The Court: When was the Union made the bargaining agent of the component group at the Lombardy Hotel?

[fol. 90] Mr. Brown: Your Honor, each one of these people were members of the Union who were employees of the Lombardy Hotel.

The Court: Is there anybody there who wasn't a member of the Union?

Mr. Brown: Oh, no, all these were members of the Union.

The Court: I say was there anybody employed there who wasn't a member of the Union?

Mr. Brown: Yes, sir; it is quite possible.

The Court: They have a bargaining agent?

Mr. Brown: They don't have us as their bargaining agent.

The Court: Aren't they entitled to have a bargaining agent?

Mr. Brown: I should think they are, your Honor.

The Court: If you bargain for one, you bargain for all of them.

Mr. Brown: No, sir; no, we don't, your Honor.

The Court: You don't?

Mr. Brown: No, your Honor. We are only bargaining for members, because we are only permitted to do so under the law. The law specifically says that we can only bargain for members, and we only bargain for them.

The Court: I thought you bargained for the entire group.

[fol. 91] Mr. Brown: No, sir, your Honor, not in Florida. We can only bargain for those that we represent. We cannot represent someone that we do not represent. Our statements to the employer, as Mr. Herman testified, was to bargain for those we represented.

The Court: All right.

Mr. Brown: There is a principle of agency involved, and under the Florida law—under the laws of other states where they have a Labor Relations Act, there is an election conducted and then a bargaining agent who is selected represents all those who are for the Union, and those who are against the Union, but under the Florida law that is not possible.

You are not permitted to represent those who you do not represent. That is contained in the statute I was reading from before, 447.03, because it says, "employees shall have the right to self organization." You will find other sections of the law which say they don't have to join either,

and they don't have to be represented, so we have to abide by that law.

Now, I think, your Honor, that Justice Drew, even yesterday, in commenting on the statements of the proof necessary to show whether or not we represent an employee, or a number of employees, stated that it was only necessary to establish in court that we were in fact the representative of the people. That was his comment yesterday, when Mr. Barkdull was present, and that, I think, we have done conclusively.

[fol. 92] We represented them prior to that time. We conveyed that information to the hotels. They did not dispute it; they admitted it. There was no controversy between us on that point. We were willing to put it to an election, if there was any doubt, but it was—there was no doubt about it, and that testimony is, I submit, your Honor, completely uncontroverted.

So that on the basis of the failure of any showing by the plaintiff that there has been a violation of law, your Honor, I submit that the injunction should be denied.

STATEMENT ON BEHALF OF DEFENDANTS

Mr. Gramling: If your Honor please, in conclusion, I would like to direct the attention of the Court to this decision that was handed down last week, is actually not a repeal. It is true that we refer to it now as the Hobson Bill, and we moved to strike the enacting clause yesterday, because we do feel that the fever of legislation had spread down that green hill into the Capitol building.

But nonetheless, we take this in the light of the law as it existed, and then apply such innovation as may be read into this, and we find that there is not as much innovation as may at first appear.

First of all, I would direct the attention of the Court to the law as it undeniably existed prior to the entry of this particular "Hobson Bill".

The Moore versus City Dry Cleaners and Laundry, which your Honor will recall perhaps better than anyone [fol. 93] in Dade County, was one of the three laundry cases where the Supreme Court of Florida stated that—in one case where you have no members, but you are picket-

ing to invite, induce and signal a strike; and in another case where you represented a minority, and proved it by having a ballot, and did not carry a majority; and in another case where you didn't have any strike ballot at all, but yet some people came out on strike—in all three cases, picketing was not to be enjoined—peaceful picketing—and I will refresh your Honor's memory as to that portion of the Moore versus City Dry Cleaner case, which said in effect, this:

> "The evidence in the record plainly shows the existence of a 'labor dispute' between the contending parties,"

and they cite American Federation of Labor versus Swain, and all those decisions which your Honor is familiar with.

Then it added, "In the light of this evidence, we know of no lawful authority under which a court of equity may proceed to enjoin a free discussion of the facts and the circumstances surrounding such labor difficulty, even though the things said may prove to be unfavorable to the industrial or business establishment towards which these statements are directed."

Then it concluded in this manner:

> "To enjoin picketing without violence, force coercion or other unlawful or oppressive conduct, or to make [fol. 94] the expression of the right dependent upon the existence of a labor dispute or strike in which such person must have a directed interest, runs counter to the Constitution."

In other words, they held that the application of Section 447.09 (3) and (4) require a majority ballot, as a condition precedent to the strike, and that that ballot must be secret, would, if applied, be unconstitutional, so in all three laundry cases, they refused to apply it.

Subsequently, a similar case arose before the Hon. Aquilino Lopez, in Key West, involving the Hotel and Restaurant Workers versus Kaufman, doing business as A & B Lobster Bar, which was taken to the Supreme Court on that very basis by our late and at this time, beloved former Attorney General, Tom Watson, and the Court, in effect,

said, "Look, we wrote you the story three times. We are not going to write it again, and we are going to ignore that contention."

Then again more recently, Jeptha Marchant, Esq., in appeal to the Supreme Court of Florida, on this same statute, asking them in effect to please reverse the laundry cases, and the case reported as Perez versus Tripoletti, involving the Ladies' Garment Workers, in which case again, the Supreme Court of Florida ignored the statute and refused to apply it.

Now, no later than last week, the Saxony Hotel went to Tallahassee again urging that self-same statute and again [fol. 95] the Supreme Court ignored it, and you will find their six-and-a-half page opinion barren of any mention of the principal contention of the petitioners for certiorari, referring to 447.09 (3) requiring a majority statute.

"To the contrary," they stated, "without a doubt a labor organization has the right to engage in peaceful picketing of an employer's premises, when predicated upon a refusal of the employer to recognize and negotiate with the Union as a representative of such employer's employees," which gets right back to your Honor's laundry cases.

Now, comes the one point that gave us some grief, until it was clarified, "In order for such picketing to be lawful, the Union must establish that the employees have chosen it as their representative."

The first question was, to whom do we establish it? They clarified that—establish it to a court.

Now, how do you know the Supreme Court meant that you establish it in due course to the court, that you represent any employees whatsoever?

Note the significance of the verbiage in the next paragraph, "And the labor organization must also inform,"—whom?—"the employer of the object to be accomplished by the picketing."

In other words, you inform the employer of the nature of your dispute with him, but generally—in other words, in a contest such as this, we show the Court that the Union, [fol. 96] as a matter of fact, did represent the employees. It is simply to realize that any other construction would result in an absurdity, where the Court would actually dele-

gate a quasi-judicial, or a wholly-judicial process to some outsider not named, no machinery for it, or anything else.

Now, if your Honor please, your question I think was excellently directed to the proposition—suppose 100 different employees selected a different bargaining agent. That is the basis for much academic discussion. However, it has, fortunately, never arisen as a matter of fact existing before any chancellor.

I frankly don't know what will happen when the time comes when 100 employees have 100 different unions to represent them. However, this is the state of the law as reiterated no later than yesterday, by Hon. Justice Hobson, the author of the opinion in the case of Miami Laundry Company versus Laundry, Linen and Dry Cleaning Drivers, reported in 41 So. 2nd, 305.

I read from that text, appearing on 308:

> "We hold that the rights, privileges and immunities granted and guaranteed by our Declaration of Rights and Statutory Law,"

meaning 447.03, giving the right to employees to designate their own bargaining agent——

> "are protection and guarantees which are accorded in a purely personal and non-assignable manner to the [fol. 97] employees as individual citizens."

Meaning, of course, that the Constitution and the statutes takes the humblest little workman and tells him that he has a right to name his bargaining agent as an inalienable, personal, non-transferrable (sic) right, and that is his right, and you have seen today the presentation to you of a vast majority of employees, each of whom has told you, "Yes, sir; I did designate that Union as my agent. I want to be represented. I want to secure to myself the blessings of collective bargaining, as is contemplated by the amended provisions of Section 12 of our Declaration of Rights of the Constitution of the State of Florida, and by Section 447.03."

Now, since the majority have, we obviously have met the requirements of the Court, that we establish the employees have chosen us. We did that.

Inform the employer? I don't think the most naive person in all of Dade County believes that management doesn't even dream why in the world we are picketing, or what in the world we want, because you have heard the undenied, undisputed testimony of Mr. Herman.

You have heard the undisputed testimony of the vice-president and the president of the organization, who said, "Yes, I talked to him, I sent them to my lawyer, and that's all." That is a far cry from negotiating in good faith as was guaranteed to whom—not to the Union—according to [fol. 98] Justice Hobson, but to each one of those employees, the little fellow who comes along and says, "Mr. Big Hotel Baron, I can't deal with you man to man, across a level surface. I got to stand here and look way up high, but I will collectively, and through the blessings of this legislation, I will talk to you even-steven on a level keel basis. I have named Local 255 to do it for me."

And, your Honor, they have all told you that they had done so. Local 255, speaking through its organizer, and as a result of the mandate from that membership says, "I tried to talk to him, but he cut me off, and tried to send me to a lawyer who is exercising the utmost of genius to frustrate us in every hotel, and with whom I have had previous unhappy experience."

The Court: Maybe he didn't want to talk to Mr. Sibley any more than this gentleman wanted to talk to Mr. Herman.

Mr. Gramling: Sir, I have no doubt but that the antipathy was mutual, sir.

However, then he did designate an alternate, Mr. Baumann, and we find that Mr. Herman is perfectly willing to deal with Mr. Baumann. Unfortunately, that went by the board. So, if your Honor please, we feel that first of all, we have met the requirements of the law as we knew it when the strike was called, and we have even met the requirements of the more recent Hobson Bill, which was delivered to us in the middle of all of this litigation, at a time when you will find it uncontroverted that the Union [fol. 99] is trying to play the game of the laws of Florida, the way the laws are, and meeting every requirement, in all sense of fairness on behalf of those members out there.

In trying to do it, it patterns itself after the rules. Even as the rules are changed as we go through the deal, we still have met them, by not just a preponderance of evidence, but upon the uncontroverted, undenied evidence after the presentation of which, plaintiffs rested.

COLLOQUY

Mr. Barkdull: I am sorry that your Honor doesn't have the benefit of all the comments which were directed by and to the Supreme Court of Florida yesterday.

Counsel has seen fit to bring your Honor's attention to certain, as they say, statements that took place, and I would like to quote one of the justices. Mr. Gramling asked the Hon. Justice Hobson how you establish that the Union represents the employees. Mr. Justice Hobson said, "You establish it by some trustworthy method to the employer, and you prove it at the time of the trial."

He didn't say you establish it at time of trial. He said you prove the establishment you have at the time of trial. Now, when this question of Mr. Baumann came up—I am surprised that they argued that when Mr. Herman admitted from the stand that Mr. Grossman never told him that Mr. Baumann was his agent, so I think that takes care of any negotiations with Mr. Baumann.

Now, your Honor, pointing out, as your Honor did in [fol. 100] the questioning of Mr. Brown relative to being the bargaining agent for each member within one particular craft, if you have 100 members in that particular craft or unit, you would have 100 different bargaining agents.

If you take, for the sake of argument, his position that you can have 100 different bargaining agents, they are still not entitled to any strike walk-out or cessation of work in this hotel if they met every other requirement that the Supreme Court laid down in the Saxony case, and Mr. Brown stated in his argument that the facts and circumstances were identical in this case as in the Saxony case. That ought to be sufficient for your Honor to follow the law in the Saxony case, but take their position that they represent certain employees, and they can only bargain for the employees they represent.

That is the position they took. The statutes of Florida are clear that it shall be unlawful for any person to participate in any strike, walk-out or cessation of work or continuation thereof, without the same being authorized by a majority vote of the employees governed thereby, providing that this shall not prohibit any person from terminating his employment of his own volition.

The fact that the people the union represents voted here, ain't the election of the people that are employees. That is only the election of their people, and they don't establish that they had any majority vote of the employees in this [fol. 101] hotel, and I say your Honor doesn't have any alternative under the facts in this case, and the testimony of Mr. Herman, that he wouldn't negotiate with Mr. Sibley, and his own testimony that Baumann was not authorized, and he was told that Baumann was not the agent of the hotel—your Honor doesn't have any alternative but to grant this temporary injunction, because the Union failed to come up to scratch with what the Supreme Court required them to do.

Mr. Brown: Your Honor, may I make one brief statement? I hate to carry this on other than to say that in the Saxony case, your Honor should know why the Court took the action it did.

The cases were heard only in part by the lower court. The plaintiff put his testimony on. We moved for a dismissal. The lower court dismissed—that is, refused to grant the injunction on our motion, did not hear our testimony. It was not necessary for us to put any testimony on, because the plaintiff had not sustained his allegations, and it was on that basis that the lower court refused to grant the injunction.

But in the opinion of lower court, the lower court said, "We will not pass on the illegality or legality of the action taken. We reserve that to final hearing."

The Supreme Court took the position that the lower court was wrong, and that the lower court should have passed on it, and so we called it to the Supreme Court's [fol. 102] attention yesterday, to the fact that we had put on no evidence, and they said, "Well, you have the right to go in and file a motion to dissolve, the next day, and put

your evidence on. But in view of the fact there is only one side heard, and there was even no answer filed, everything that the plaintiff said has to be taken as true, and on the basis of that, we had to grant the injunction." But you do have the right to file your motion to dissolve the very next day, tomorrow, they said, to dissolve that injunction.

"But we suggest if you can put on testimony showing the purpose of the picketing, we are not precluding you. This is only an interlocutory order." That is what the Supreme Court said.

I call your attention to the fact that we have filed a sworn answer in this case and we have developed our proof in this matter.

The Court: Gentlemen, I haven't had an opportunity to read this other case or opinion, and I am going to read it over and let you know later.

(Thereupon the hearing was concluded.)

[fol. 103] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 104]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 179,408

STUYVESANT CORPORATION, a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

RESTRAINING ORDER—June 2, 1955

This Cause has been heard after due notice on the plaintiff's application for interlocutory injunctive relief and the

Court has considered the testimony and the proofs submitted in support of, and in opposition to such application.

The Court is guided and governed by the opinion of the Supreme Court of Florida filed May 27, 1955, in Sax Enterprises, Inc. versus Hotel Employees Union, Local No. 255 (A. F. of L.) et al.

Accordingly, it is ordered and decreed that the defendants, Hotel Employees Union, Local No. 255 (A. F. of L.) and Albert H. Berlin, Clarence L. Smith and Henry Mischel, their agents, servants, employees and all persons acting in concert or participation with them, be and they are, and each of them is, restrained and enjoined until the further order of this Court from picketing the plaintiff's place of business located at 6305 Collins Avenue, Miami Beach, Florida.

The plaintiff shall file herein an injunction bond payable to the defendants, in the principal amount of $2500.00, with [fol. 105] good and sufficient surety, to be approved by the Clerk of this Court and conditioned as required by law to pay all costs, damages and expenses which may be suffered by the defendants by reason of the issuing of this injunction if the injunction shall be dissolved, or the complaint upon which it was granted, be dismissed.

Ordered and Decreed in the Courthouse, Dade County, Florida, at Miami, this 2 day of June, 1955.

/s/ Marshall C. Wiseheart, Circuit Court Judge.

[fol. 106]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 179,408

STUYVESANT CORPORATION, a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255, (A. F. of L) et al., Defendants.

STIPULATION RE: DATE OF FILING OF SUPPLEMENTAL ANSWER—February 24, 1956

It Is Stipulated by and between counsel for respective parties that the Supplemental Answer attached hereto was filed on June 28, 1955 and was apparently misfiled but for the purposes of the Record On Appeal the said Supplemental Answer shall be deemed and considered as having been filed June 28, 1955 as a predicate for the affidavit of Clarence Smith attached to the Stipulation re Final Hearing.

Witness our hands at Miami, Dade County, Florida this 24th day of February, 1956.

Sibley & Davis, Attorneys for Plaintiff, /s/ Marion Sibley.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, /s/ Carrington Gramling.

[fol. 107]

SUPPLEMENTAL ANSWER—Filed June 28, 1955

Come Now the defendants and make this their Supplemental Answer and would respectfully show unto this Honorable Court that this Court is without jurisdiction to act in the cause for the reason that the plaintiffs in operation of said hotel are engaged in a business which affects inter-state commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state buslines, inter-state and international steamship companies and by passenger automobiles.

Said business further is part of "package deal" arrangements with said various inter-state and international airlines, including Pan American Airways, American Airlines,

Delta Airlines, Eastern Airlines, Trans-World Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular & Occidental Steamship Company, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coast Line Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus [fol. 108] line companies including Greyhound Bus Line Company, Trailways Bus System and various other inter-state bus line companies. Said "package deal" arrangements are arrangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by plaintiffs and said inter-state carriers. All expenses incurred in promoting, making and consummating said inter-state and international sales are jointly shared by plaintiffs and said inter-state and international carriers. The proceeds of said inter-state and international sales are divided between plaintiffs as operator of said hotel and said inter-state and international carriers.

Said plaintiffs, as a part of the operation of said hotel, purchase numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said plaintiffs as a part of the operation of said hotel sell directly outside of the State of Florida and within the State of Florida for carriage or resale outside of the State of Florida.

Said plaintiffs as part of the operation of said hotel advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the states of the United States outside of the

State of Florida and in various countries outside of the United States.

Plaintiffs as part of the operation of said hotel have on said premises various shops and services engaged in inter-state commerce including Western Union Telegraph services, numerous travel agencies, transportation offices for airlines, steamship lines, railroad companies and bus lines, inter-state stock exchange branches, inter-state chain drug stores, inter-state clothing stores and other inter-state retail stores.

Defendants further state that said hotel is part of a multi-state chain, said entire chain being engaged in inter-state commerce, so that labor disputes at plaintiffs' hotel affects inter-state commerce.

Defendants further state that the Congress of the United States has by legislative enactment under the Constitution of the United States, occupied the fields as to all matters [fol. 109] complained of in the petition of plaintiffs and this State Court has no jurisdiction to act in the premises wherefore the said cause should be dismissed for lack of jurisdiction.

Gramling & Gramling, J. W. Brown, Ben Gettler,
By Carrington Gramling, 224 Shoreland Building,
Miami, Florida, Solicitors for Defendants.

Certificate of service (omitted in printing).

[fol. 110]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

In Chancery No. 179408

[Title omitted]

STIPULATION RE: FINAL HEARING—Filed December 20, 1955

It Is Stipulated by and between counsel for the respective parties that all testimony and other evidence heretofore introduced in this cause be and the same is hereby reaffirmed for the purpose of Final Hearing, with the single

addition however, that at said Final Hearing, the defendants would produce Clarence Smith as a witness, who would testify according to affidavit attached hereto, and it is

Stipulated that said testimony would be objected to on the grounds that said testimony is immaterial and irrelevant; and it is

Stipulated that this testimony and the objections thereto be submitted to the Chancellor for ruling thereon, and in the event the objection is sustained, the affidavit shall remain as part of the record as a proffer, and all objections as to form of such proffer be and they are hereby waived.

It Is Further stipulated that Final Decree be entered by the Chancellor upon the record as now made in the light of this Stipulation.

[fol. 111] Witness our hands at Miami, Dade County, Florida this 30 day of November, 1955.

Sibley & Davis, Attorneys for Plaintiff, By /s/ Marion E. Sibley.
J. W. Brown & Gramling & Gramling, Attorneys for Defendants, By Carrington Gramling.

[fol. 112]

No. 179408

AFFIDAVIT OF CLARENCE SMITH FOR DEFENDANTS

Personally appeared before me the undersigned authority Clarence Smith, who being by me first duly sworn deposes and says as follows:

"My name is Clarence Smith, and I am Business Agent with Hotel Employees Union, Local 255 duly licensed under the laws of the State of Florida and have been a resident of Dade County, Florida for the past 22 years. That plaintiffs, in the operation of their hotel are engaged in a business which affects interstate commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from vari-

ous states of the United States outside of Florida, and from various countries outside of the United States by various interstate and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state bus lines, inter-state and international steamship companies, and by passenger automobiles. Said business further is part of "package deal" arrangements with said various [fol. 113] inter-state and international airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Transworld Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular and Occidental Steamship Companies, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coastline Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus lines companies including Greyhound Bus Lines Company, Trailways Bus System and various other inter-state bus line companies. Said "package deals" arrangements are arrangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an intergral (sic) part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by Plaintiffs and said inter-state carriers. All expense incurred in promoting, making and consummating said inter-state and inter-national sales are jointly shared by Plaintiffs, and said inter-state and international carriers. The proceeds of said inter-state and inter-national sales are divided between Plaintiff, as operator of said hotel and said inter-state and international carriers; said sales of Plaintiff in inter-state commerce exceed in volume amount sufficient to establish Jurisdiction of National Labor Relations Board under its rules and regulations.

Said plaintiffs, as a part of the operation of said hotel, purchases numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said Plaintiffs, as a part of the operation of said hotel, sell directly outside of the State of Florida and within the State of Florida for carriage or re-sale outside of the [fol. 114] State of Florida. Said plaintiffs as part of the operation of said hotel, advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the States of the United States outside the State of Florida and in various countries outside of the United States.

Further affiant sayeth not.

/s/ Clarence L. Smith, Affiant.

Sworn to and subscribed before me this 15th day of November, 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large.

My Commission Expires: Aug. 20, 1959

(Seal)

[fol. 116]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

In Chancery No. 178,408

STUYVESANT CORPORATION, a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

FINAL DECREE—December 20, 1955

This Cause coming on to be heard upon final hearing pursuant to the Stipulation of the parties to this cause, (and it appearing to the Court that the defendants proffered the affidavit of Clarence Smith as evidence upon this final hearing, and plaintiff objected to said affidavit on the ground that the same is immaterial and irrelevant, and the Court sustains the objection thereto upon said grounds. The Court having considered the entire record in this cause, including the testimony taken before the Court,) and the Court being fully advised in the premises,

It Is Thereupon Ordered, Adjudged and Decreed that the restraining order heretofore rendered against the defendants, and each of them, which order is recorded in Chancery Order Book 1187, at Page 355, in the records of the Clerk of the Circuit Court of Dade County, Florida, be and the same is hereby made permanent. The injunction bond filed herein is hereby cancelled and the principal and [fol. 117] surety released of all liability thereunder. The costs of this cause hereby assessed in the sum of $354.66 are taxed against the defendants, for which let execution issue.

Done and Ordered in Chambers at Miami, Florida, this 20th day of Dec., 1955.

/s/ Marshall C. Wiseheart, Circuit Judge.

[fol. 118]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

In Chancery No. 179,408

[Title omitted]

NOTICE OF APPEAL—Filed February 2, 1956

The defendants, Hotel Employees Union, Local No. 255, et al, take and enter their appeal to the Supreme Court of Florida to review the order, judgment or decree of the

Circuit Court for Dade County, bearing date the 20th day of December, 1955, entered in the above styled cause and recorded in the records of said Court in Book 1217, Page 220, and all parties to said cause are called upon to take notice of the entry of this appeal.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By Carrington Gramling.

[fol. 119]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

In Chancery No. 179,408

[Title omitted]

ASSIGNMENTS OF ERROR—Filed February 2, 1956

Come now the defendants by their undersigned solicitors and make the following assignments of error as the erros (sic) which they intend to rely upon in the Supreme Court of Florida, for a reversal of the Order (or Final Decree) made herein on the 20 day of December, 1955, and recorded in Chancery Order Book 1217, page 220 of the records of this Court, from which they have appealed:

1. The Court erred in enjoining the defendants in peaceful picketing the business place of the complainant, whereby your defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly, and the right to work or refrain from working as guaranteed within the meaning and scope of Sections I, XII, XIII, XVII and XIX, Declaration of Rights, Constitution of the State of Florida, and Amednments (sic) I, V, XIII and XIV of the Constitution of the United States of America.

2. The Court erred (in and by such final decree) in finding that the defendants should have established to the satisfaction of the employer, that the employees had chosen defendant Union as their representative and further requiring that the labor organization must also inform the em-

ployer of the object to be accomplished by picketing and [fol. 120] afford an unwilling or hostile employer an unspecified waiting period within which to engage in negotiations, all as a prerequisite to the right to strike and picket, whereby your defendants and the Union members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments I, V, XIII and XIV of the Constitution of the United States of America.

3. The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

5. The Court erred (in and by said final decree) in enjoining peaceful picketing and the dissemination of information predicated upon an unsubstantiated finding of fact, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

6. The Court erred in requiring a direct employer-employee relationship as a prerequisite to picketing and as a prerequisite to publicizing the existence of a labor dispute, contrary to Amendments I and XIV of the Constitution of the United States of America.

7. The Court erred (in and by such final decree) in permanently enjoining peaceful picketing and the publicizing of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefor, and [fol. 121] beyond the scope of any finding of fact insubstantial or otherwise, thereby depriving the members of this

Union the guarantees of Amendments I and XIV of the Constitution of the United States.

8. The Court erred (in and by such final decree) in assessing costs against the defendant.

J. W. Brown, Gramling & Gramling, Solicitors for Defendants, By Carrington Gramling.

[fol. 124] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 126]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957, DIVISION B.

Case No. 28,242

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), et al., Appellants,

v.

STUYVESANT CORPORATION, a Florida corporation, Appellee.

An Appeal from the Circuit Court for Dade County, Marshall C. Wiseheart, Judge.

J. W. Brown and Gramling & Gramling, for Appellants.

Sibley & Davis and Thomas H. Barkdull, Jr., for Appellee.

OPINION PER CURIAM—Filed March 15, 1957

Affirmed on authority of Fontainebleau Hotel Corp. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., opinion filed February 1, 1957.

TERRELL, C.J., HOBSON, DREW and O'CONNELL, J.J., concur.

[fol. 128]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957 DIVISION B.

Case No. 28,242

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al.,
Appellants,

v.

STUYVESANT CORPORATION, a Florida corporation, Appellee.

JUDGMENT—MARCH 15, 1957

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree herein, and briefs and arguments of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellees do have and recover of and from the Appellants their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

[fol. 136] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. A]

IN THE SUPREME COURT OF FLORIDA

Case No. 28,251

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), et al., Appellants,

v.

ABE ALLENBERG, A. BIRNBAUM, etc., et al., Appellees.

Transcript of Record—Filed April 5, 1956

J. W. Brown and Gramling & Gramling, 226 Shoreland Building, Miami, Florida, Attorneys for Appellants.

Sibley & Davis, Thomas H. Barkdull, Jr., 605 Lincoln Road, Miami Beach, Florida, Attorneys for Appellees.

[fol. 1]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

IN CHANCERY No. 180056

ABE ALLENBERG, A. BIRENBAUM, MORRIS ROSENBERG, MORRIS FISHER, d/b/a MIAMI COLONIAL HOTEL, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, defendants.

COMPLAINT FOR INJUNCTION AND OTHER RELIEF—Filed before me May 28, 1955. Vincent C. Giblin, Judge.

The plaintiffs, Abe Allenberg, A. Birnebaum, Morris Rosenberg, and Morris Fisher, files their complaint for in-

junction and other relief against the defendants, Hotel Employees Union, Local No. 255, (A. F. of L.) and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, and alleges:

1) The plaintiffs are residents of Dade County, Florida and are each over the age of twenty-one (21) years. The defendant, Hotel Employees Union, Local No. 255, (A. F. of L.) is a labor organization within the intent and purview of the laws of the State of Florida, and the defendants, Albert H. Berlin, Clarence L. Smith and Henry Mischel, are each residents of Dade County, Florida, and are each over the age of twenty-one (21) years; that said individual defendants and each of them are the duly authorized business agents and officers of said labor organization.

2) Plaintiffs are the operators of the Miami Colonial Hotel, which is a hotel consisting of approximately 190 rooms, located at 140 Biscayne Boulevard, Miami, Florida. The Miami Colonial Hotel has a reasonable value and worth of approximately one and a half million dollars ($1,500,000.00). Said hotel has been in operation for many years, and the plaintiffs operate in connection therewith a cocktail lounge, dining room, and other various facilities usual and necessary in the operation of a first-class hotel. The plain- [fol. 2] tiffs' hotel has enjoyed for many years the finest reputation and has earned an excellent and valuable good will and is nationally known and recognized as one of the leading hotels of Miami. The plaintiffs' hotel business has become lucrative. It caters to the public by maintaining a dignified atmosphere, serving only the highest grades of foods and beverages, and by rendering superlative service to its patrons and guests.

3) Employed at the plaintiffs' hotel are approximately 60 employees who perform services as cooks, waiters, bell boys, maids, elevator operators, and other similar duties normally required to operate and maintain a first-class hotel. The plaintiffs have had no labor dispute with their employees with regard to wages, working conditions or any other phase of employer-employee labor relationship existing between the plaintiffs and their employees. The plaintiffs have enjoyed the most cordial labor relations with

their employees, and have at all times afforded to their employees a satisfactory standard of pay and working conditions. The plaintiffs have received no demands or complaints from its employees with reference to their wages, hours or working conditions, and are wholly unaware of any labor dispute of any nature, character or description existing between them and their employees.

4) Plaintiffs believe and are informed that sometime early in 1955, one or two carpet-bagger labor organizers arrived in Miami with the announced intention of stirring up labor discord between employers and employees at several of the hotels in Miami, with the purpose in mind of creating for themselves a lucrative labor organization by which said carpet-bagger organizers could reap a harvest of money from the employees of the hotels in Miami through dues which the said organizers expected to charge said employees in the event they could inveigle said employees to join with said organizers in creating a labor union. These northern organizers announced that they intended to form a labor organization, and they have named their alleged organization, Hotel Employees Union, Local No. 255, A. F. of L. Said union had no members except the two professionals who arrived with the announcement that they constituted said labor organization.
[fol. 3] Since said time the two organizers, one of whom is David Herman, and the other is one of the defendants, Albert H. Berlin, have utilized all the pressure tactics known to labor organizers to force and intimidate the employees of the plaintiff to become members of said labor organization. Their efforts in enlisting membership has been a distinct failure, so the said professionals determined to place pressure, intimidation and threats upon the hotel owners, in order to force said hotel owners through economic sactions, (sic) to sign contracts with the said alleged organization, and thus use said contracts as a basis to force the employees of the hotels to become members of said alleged union.

5) The plaintiffs have had no dealings whatsoever with any members of the Hotel Employees Union, Local No. 255, A. F. of L. Said union has never sought to negotiate with

the plaintiffs as a representative of plaintiffs' employees; in fact, said union does not represent the vast majority of the plaintiffs' employees. No labor controversy or negotiations with reference to any labor dispute has ever been instituted, inaugurated or carried on between the plaintiffs and the said alleged union, and the said union has never sought to bargain with the plaintiffs as the alleged representative of plaintiffs' employees, and plaintiffs allege that the said union has never been authorized by the vast majority of its employees to represent them.

6) The plaintiffs have never refused to recognize the defendant union, and have never refused to negotiate with said union; the plaintiffs have never been requested by said union to negotiate with it and have never been advised by the said union that the union is the bargaining agent for plaintiffs' employees, nor have the plaintiffs been advised by the said union that it is the labor organization representing plaintiffs' employees. Save and except that on May 28, 1955, men proporting (sic) to represent the defendant union accosted plaintiff Abe Allenberg at the Miami Colonial Hotel. They told him that they demanded that a strike vote be held of plaintiffs' employees immediately. Allenberg stated that it would be necessary for him to discuss their demand with his partners and that he would reply to them by May 30th at twelve o'clock noon. They stated that they would discuss his suggestion with their committee. Shortly, thereafter, they returned and stated that unless a vote was held within the next few minutes remaining until twelve [fol. 4] o'clock noon, they would strike the hotel.

In truth and in fact, no demand or grievance of any nature, character or description whatsoever of the plaintiffs' employees has, up to the present time, been made of or placed before the plaintiff, its officers or agents. Without affording any opportunity for discussion, the proported (sic) representatives of the defendant union then left and then the defendant union at 12:00 o'clock noon, on Saturday, May 28, 1955, placed a picket line consisting of six (6) or more pickets at the plaintiffs' hotel and place of business, and said pickets have seized and are occupying the property and premises of the plaintiffs unlawfully and contrary to the laws of the State of Florida. And each of said pickets in

said picket line carries and displays placards and posters which falsely and fraudulently allege that the hotel is on strike. Each of said placards carries the following statement:

> "This hotel on strike. Hotel Employees Union, Local #255, American Federation of Labor, 1575 Washington Avenue, Miami Beach".

Such representation made by said union is false and untrue and the said union well knows that the said statement is false and untrue. Said statement is amde (sic) for the purpose of deceiving the public. The picket line was placed around the plaintiffs' place of business for an unlawful and illegal purpose in that no lawful strike exists, no lawful strike vote has been held as required by the laws of the State of Florida, and no basis exists upon which a lawful strike vote could be called. No lawful labor dispute exists between plaintiffs and their employees. This conduct of the said defendant union is unlawful and is contrary to the Constitution and the laws of the State of Florida, in that the said defendant union has never been certified to the plaintiff as the lawful bargaining agent of the plaintiffs' employees, and said union has never approached the plaintiffs seeking to bargain with the plaintiffs as the authorized bargaining agent of the plaintiffs' employees, and in that no demand for collective bargaining has ever been made by said union upon the plaintiffs. This conduct on the part of the defendants is unlawful and directly in conflict with the [fol. 5] provisions of Paragraph 3, Section 447.09 Florida Statutes, in that the agreement to strike and cease work was not authorized by a majority vote of the plaintiffs' employees to be governed thereby, and there was no election by secret ballot, as required by Paragraph 4 of Section 447.09, Florida Statutes. Thus, the defendant union, through its unlawful conduct, seeks to force the plaintiffs to execute a contract with it in order that said union might utilize such contract to coerce and force plaintiffs' employees to become members of said union.

7) At 12:00 o'clock noon on May 28, 1955, the defendants and their henchmen congregated at plaintiffs' place of business in large numbers, and as a majority of plaintiffs'

loyal employees arrived for work, each was accosted by the group and urged to join the defendants' strike movement. Some of the employees were threatened if they did not cease to work, and many of them were intimidated by the defendants and their associates, agents and servants. As a matter of fact, the pickets have used physical force and violence upon some of the employees who returned to work, and a number of employees have received innumerable anonymous telephone calls of threats of all manner of bodily harm and injury to their person, should they return to the plaintiffs' place of business. Most of the plaintiffs' employees who refused to attend work did so because of coercion and intimidation inflicted upon them by the defendants, and the large number of persons defendants had gathered at the entrance to the plaintiffs' place of business, in an effort to discourage and threaten plaintiffs' employees as they arrived. All of this was unlawful and contrary to the provisions of Paragraph 11 of #447.09, Florida Statutes.

The picket line was placed in retaliation to the Supreme Court of Florida ordering an injunction against said union prohibiting picketing at the Saxony Hotel, Miami Beach, Florida, in an opinion reported during the early morning of May 27, 1955.

8) The defendant union is maintaining the picket line around the premises owned and operated by the plaintiffs, and said picketing is unlawful and in violation of Paragraph 13, #447-#447.09, Florida Statutes, in that said union [fol. 6] maintains more than six pickets in the space surrounding the plaintiffs' place of business. Said pickets have not engaged in peaceful or reasonable picketing, and the same has become unlawful in that the pickets maintaining the picket line are attempting to stop patrons of plaintiffs' hotel from entering or leaving the premises, and are using abusive and obscene language, and are harassing and threatening the plaintiffs' patrons and guests.

9) The picket banners carried by said pickets make false, unlawful, and fraudulent statements in that said banners charge that the employees of the hotel are on strike, although the said union knows the statement to be untrue

and false. Thus the said union, through false and misleading picket banners, attempts to induce guests and patrons of the plaintiffs' hotel to leave, and through such fraudulent misrepresentations, defendants seek to destroy the plaintiffs' business and injure the plaintiff in the operation of its business. By reason of the unlawful conduct on the part of the defendants, members of the public are being deterred and stopped from patronizing the plaintiffs' place of business, which is causing plaintiffs irreparable loss and damage.

Plaintiffs business depends upon booking groups of guests into their hotel far in advance of their arrival. This method of doing business has been built up after many years and has resulted in the operation, by the plaintiffs, of a successful and lucrative business. Continuation of the unlawful picketing by the defendant union will result in intimidation of many of plaintiffs' employees and the creation of fear to the point where they will not enter the hotel to work. Plaintiffs will thus be prevented from rendering proper service to their guests. There is no method or means by which the exact loss may be determined and there is no method or means of determining the full damage caused by such false and fraudulent conduct of the said defendant union.

10) The defendant union and its representatives, threw up its picket line without notice or opportunity for the plaintiff to present its cause to the court to determine the right of the union to cause plaintiff the damage it is presently suffering. The plaintiff is entitled to restoration of status [fol. 7] quo ante by temporary injunction without notice until such time as the court may have the opportunity to declare and determine whether or not the defendant union is entitled to engage upon the conduct which is aimed at destroying the plaintiffs' business and utilizing in furtherance thereof the unlawful means aforesaid.

Forasmuch, Therefore, as plaintiffs are without remedy in the premises, save and except in a Court of Equity, and to the end that justice may be done, plaintiffs pray:

(a) That this Court without notice, temporarily enjoin and restrain the defendant union forthwith from maintaining said pickets or picket line at the plaintiffs' place of

business and that the court restore to plaintiffs its status quo ante, pending a determination of the right of the defendant union to picket the plaintiffs' business.

(b) That this Court temporarily enjoin and restrain the defendant union, and its agents, officers, representatives, servants and employees, including the defendants, Albert H. Berlin, Clarence L. Smith and Henry Mischel, from picketing or causing to be picketed or aiding and abetting in the picketing or authorizing the picketing of plaintiffs' place of business, or of advertising or publishing any false and scandalous statements in reference to the plaintiffs' business, or their officers, agents, representatives and employees, or by any act or method of boycotting or injuring the same, either by picketing or otherwise.

(c) That this Court make such injunction permanent upon final hearing.

(d) That this Court grant such other and further relief as to it may seem meet and proper.

[fol. 8] Abe Allenberg, A. Birnebaum, Morris Rosenberg, Morris Fisher, d/b/a Miami Colonial Hotel, By: /s/ Abe Allenberg.

Sibley & Davis, 605 Lincoln Road, Miami Beach, Florida, Attorneys for plaintiff, By: /s/ Milton E. Grusmark, of counsel.

Duly sworn to by Abe Allenberg, jurat omitted in printing.

[fol. 9]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

IN CHANCERY No. 180,056

[Title omitted]

RESTRAINING ORDER—May 29, 1955

This Cause has been heard after due notice on the Plaintiffs' application for interlocutory injunctive relief and the Court has considered the testimony and the proofs submitted in support of, and in opposition to such application.

The Court is guided and governed by the opinion of the Supreme Court of Florida filed May 27, 1955, in Sax Enterprises, Inc., versus Hotel Employees Union, Local No. 255 (A. F. of L.) et al.

Accordingly, it is ordered and decreed that the defendants, Hotel Employees Union, Local No. 255 (A. F. of L.) and Albert H. Berlin, Clarence L. Smith and Henry Mischel, their agents, servants, employees and all persons acting in concert or participation with them, be and they are, and each of them is, restrained and enjoined until the further order of this Court from picketing the Plaintiffs' place of business located at 146 Biscayne Boulevard, Miami, Florida. [fol. 10] Ordered and Decreed in the Courthouse, Dade County, Florida, at Miami, May 29, 1955.

/s/ Vincent C. Giblin, Circuit Court Judge.

[fol. 11]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

IN CHANCERY

No. 180054

McALLISTER HOTEL, INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

No. 180055

BISCAYNE TERRACE HOTEL, INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Defendants.

No. 180056

ABE ALLENBERG, A. BIRENBAUM, MORRIS ROSENBERG, MORRIS FISHER, doing business as Miami Colonial Hotel, Plaintiffs.

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), et al., Defendants.

Miami, Florida,

Transcript of Hearing—Saturday, May 28, 1955

The above-entitled cause came on for hearing before the Hon. Vincent C. Giblin, one of the Judges of the above-
[fol. 12] styled Court, at the Courthouse, Miami, Florida, on Saturday, May 28, 1955, at 8:00 o'clock P. M., pursuant to notice.

APPEARANCES:

Sibley & Davis, Esqs., Attorneys for Plaintiffs, By: Marion E. Sibley, Esq., Thomas H. Barkdull, Jr., Esq., and Milton Grusmark, Esq., Of counsel.

Gramling & Gramling, Esqs., Attorneys for Defendants, By: J. Carrington Gramling, Esq., and Ben Gettler, Esq., Of counsel.

[fol. 13] Mr. Gramling: If Your Honor please, we were served with a bill of complaint——

STATEMENT BY THE COURT

The Court: Before you make any statement, please, I should like to state into the record my reasons for setting these cases for hearing before me this evening.

Our local rule No. 7 provides, in sub-paragraph "F" as follows:

> "Each week the presiding Judge shall designate one of the judges to act in emergency cases where, because the Clerk's Office is closed, it is impossible to file the

initial pleadings with the Clerk of the Court, and to secure a division assignment, such designation shall be for one week beginning at 9:00 o'clock in the forenoon until the Monday following such designation and ending at 9:00 o'clock in the forenoon of the second Monday following such designation.

"Notice of such designation shall be published as early as practicable in the Miami Review and Daily Record. It shall be the duty and responsibility of such designated Judge to make himself available at all times during such designated week for applications and hearings in the emergency cases to which this sub-paragraph applies, and all applicants for [fol.14] emergency relief in such cases shall apply therefor to such designated Judge."

The presiding Judge, Judge Holt, designated himself as the emergency Judge for the week beginning May 23rd, at 9:00 o'clock, and ending May 30th, at 9:00 o'clock. I have been apprised of the fact, by the affidavits of Mr. Barkdull, as follows:

That he contacted, by telephone, at approximately 11:15 this morning, the Honorable George E. Holt, one of the judges of the above-styled Court, who had been designated by himself to act as Judge in all emergency matters arising after closing hours of the Clerk's Office, and requested of said Judge that he give to him an appointment so that he might notify opposing counsel that he was going to apply, at the appointed hour before the aforementioned Judge, for a temporary injunction to restrain the picketing at the Biscayne Terrace Hotel, in Miami, Florida, and was informed by said Judge Holt that any such injunction was denied, and not to disturb him until Monday morning. Said Judge did not read the sworn statement of the plaintiff, and did not inquire of its contents and did not request or allow any argument on the [fol.15] merits of the suit by said deponent.

Then, after Judge Holt had declined, although he had designated himself as emergency Judge for this week to hear this matter, counsel presented the matter to me,

in Chambers, where I was this morning trying 13 equity cases that had been set for trial before me.

I allowed the complaint in these two cases to be filed before me and then asked the Clerk to file them in the Clerk's Office, which was done in the early afternoon today, and I agreed to hear the matter at 8:00 o'clock this evening.

So, I want the record to show why I am sitting here. I regret it exceedingly that Judge Holt did not see fit to assume the responsibility which the rule places upon him, to hear matters of this kind during the week when he is supposed to be the emergency Judge.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Barkdull: Your Honor, after leaving your Chambers at noon today, we were contacted with reference to the Miami Colonial Hotel, that a strike was placed there, or a picket line, while we were preparing the papers in these matters and attempting to get Judge Holt. This complaint was finished at approximately 5:30, and de-
[fol. 16] livered to Mr. Gramling's office, and his office was notified at 6:15 that I would request Your Honor to hear this application at this time, also. We have prepared this complaint, which is similar to the others.

The Court: I will hear you now.

Mr. Gramling: If Your Honor please, thank you for your indulgence, for a moment, because I, too, would like to read something into the record, to become a part of the proceedings in this cause.

In response to my current understanding of a decision by the Supreme Court rendered no later than yesterday, in Tallahassee, ruling, according to my present interpretation—and, of course, subject, perhaps, to more mature reflection or further clarification—reading into this decision the fact that a labor union, unique amongst all defendants ever brought before a tribunal of justice, is in a position of having the facts of a bill of complaint taken as confessed, until an answer is filed. In contemplation of this, I would, through this record, direct the attention of the Supreme Court of Florida to the fact

that I was served at 1:40 o'clock P. M., Saturday, May 28th, in the cases of the McAllister Hotel, Inc., a Florida cor-
[fol. 17] poration, versus Hotel Employees Union, Local No. 255, and yet without a Clerk's number; and Biscayne Terrace Hotel, Inc., a Florida corporation, versus Hotel Employees Union, Local No. 255, that only by the aid of practically what amounts to legerdemain and sorcery, was this counsel able to formulate, dictate and cause the mechanical transposition of answers suitable to the complaint, and have them at this moment ready to be filed before Your Honor for consideration tonight, lest we appear tonight in a position of having admitted the wild, false unfounded allegations of the two respective complaints.

I would further, with the indulgence of Your Honor, bring to the attention, via this record, to the Supreme Court of Florida, that by telephone Saturday night, at 7:35, from a secretary still working in my office, I received notice of a third case, which I am informed involves somebody by the name of Abe Allenberg, A. Birenbaum, Morris Rosenberg, Morris Fisher, an old "cracker" family——

The Court: Let us——

Mr. Gramling: —bringing a suit against us.

The Court: Let us eliminate——

Mr. Gramling: I am unable——

[fol. 18] The Court: Will you please eliminate personalities. There is not any occasion for remarks of that kind. Just present the matter to me as if I am a Judge and not a jury.

Mr. Gramling: Well, sir, we submit these two answers. I am obviously unable to give you an answer in this last case, but for the purposes of the record, please let it be noted that the defendants deny each and every of the material allegations of the complaint, if there be any, alleging any wrong doing or misconduct whatsoever, and we admit only the identity of the parties.

The Court: Now, I have not read any of the complaints in these three cases. I am not familiar with what the Supreme Court of Florida has decided in other cases.

So, I would like to have counsel apprise me of the facts on which he relies, that is, the facts he expects to prove; what his theory of the case is.

Mr. Barkdull: May I proceed?

The Court: Yes.

STATEMENT BY MR. BARKDULL

Mr. Barkdull: Your Honor, these three cases travel on the same general theory. The allegations are basically the same. They set forth that an international union de- [fol. 19] cided, earlier in this year, to organize a union down here for their own personal gain, and in furtherance of that scheme that they had sent, by one of the New York unions, the president of the union there to this area for the purpose, admittedly, of organizing a union among the hotel employees.

That the defendant, union, Hotel Employees Local No. 255, is that union.

That said union was organized February or March of this year, and the organizers went about the recruiting process of enlisting members.

That this process failed, and in an effort to coerce and intimidate the employees of these various hotels into joining these unions, that these representatives of the defendant union went to the hotels, or made it known that they would bring economic pressure upon the hotels to force them to sign a contract with the union; and after procuring that contract, they would enlist the employees as members.

These complaints set forth that none of these hotels was ever approached and asked by the defendant union to negotiate with them after the defendant union had established that they represented its employees.

[fol. 20] The complaints set forth that they have no labor dispute with their employees, and that there are no conditions that have been brought to their attention which would come under the definition of labor controversy.

That they have not been advised by their employees that this union is their lawful representative.

That they have not been or had made upon them any demand for improved working conditions as to wages, hours, and so forth.

That they have been afforded no opportunity to meet any demand which has ever been made to them, and that in the case of the McAllister Hotel, they had received absolutely no communications from this union, and received a picket line with strike banners being carried by the pickets which say, "This hotel on strike," on Thursday afternoon, at approximately 3:00 o'clock.

That in the case of Biscayne Terrace Hotel, it is alleged that they received no demand to negotiate with the union; that they received no demand from their employees, and they were not advised by their employees or by the union that it represented their employees.

[fol. 21] It is set forth in the complaint that one David Herman, the president from the New York union, did visit the hotel, did converse for a length of time with one of the owners, at which time he was advised that he must contact another man who was personally under medical care, outside of the State, and that that was the extent of the conversations; that the union did not demand recognition and did not make any demands as to working conditions at that time.

In the case of the Miami Colonial—excuse me, Your Honor. The picket line at the Biscayne Terrace was commenced approximately 3:00 o'clock yesterday afternoon, at which time the plaintiff's establishment was invaded by members of the union who ran through the hotel and physically grabbed waitresses and ushered them out of the hotel and said that there was a strike in progress.

The Court: (To the people in the audience) I will have to clear the Courtroom unless you refrain from demonstrating, please.

Mr. Barkdull: In the case of the Miami Colonial, the complaint sets forth that at approximately 11:00 A. M., this morning, Mr. Allenberg, one of the partners who operates the hotel, was contacted by a Mr. Gonzalez and [fol. 22] three of his employees, and requested to have a strike in his hotel, or have a vote in his hotel, to see if the employees wanted the defendant union to represent them.

The said Mr. Allenberg told the people he was only one of four partners, and he would give them an answer to this question by noon on Monday.

That the people, or the committee that came to see him, said they wanted to reconsider it and they came back and said, "We cannot give you to noon on Monday. We will give you until noon today."

He said that was impossible, and at noon, today, the (sic) placed a picket line at the hotel.

Now, Your Honor, we travel, admittedly, on the case of the Sax Enterprises, Inc., versus these same defendants, decided yesterday by the Supreme Court of Florida, and other authorities in this State.

I would like to read a portion of this opinion and at the conclusion of this statement I intend to bring this opinion to Your Honor.

> "Without doubt a labor organization has the right to engage in peaceful picketing of an employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union [fol. 23] as the representative of such employees. In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative (Treasure, Inc. versus Hotel and Restaurant Employees and Bartenders Union, supra) and the labor organization must also inform the employer of the object to be acomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations. See North East Texas Motor Lines, Inc. v. Dickson, et al."

Now, Your Honor, we contend that this decision and the authorities cited and statutes of this State, make four things as conditions precedent before a picket line announcing a strike at a man's place of business and causing him economic loss, may be placed around his establishment.

The first is that the union must establish that the employees have chosen it as their representative.

Second, they must make some demand or convey to the employer some object that they wish to have or some condition they wish to have corrected and some labor condition that is unsatisfactory to them in wages, hours, working conditions, and so forth.

[fol. 24] And next, in order, they must give to the employer a fair opportunity to meet with their representatives and sit down and negotiate with them on the requested demand; to give them an opportunity to meet the objective.

Now, if these three conditions are met, and if management does not sit down and talk with them and does not agree, and they have had a fair opportunity then the statutes of the State of Florida provide, that before this union can encircle this man's place of business and cause him an economic loss, they must have a secret ballot of the employer's employees, and if a majority of these employees decide to have a strike, walk-out or cessation of employment or work, they may do it. But those four conditions must be met in that order.

They must first establish to the employers that they represent their employees.

Secondly, they must make a demand on him.

Third, they must give him an opportunity to meet the demands.

Fourth, they have got to have a vote, according to statute.

One further thing in this opinion, which is pointed out in these complaints, which alleged that the picketing and [fol. 25] placard carried by the pickets, which say, "This hotel is on strike," amounts to false information and is misleading to the public, and it is an unfair labor practice, and we are entitled to an injunction on that ground.

The Supreme Court, at page 6 of this opinion, sets out that the placards carried by the pickets contain false information, and it cannot be said that they convey information concerning the facts of a labor dispute.

It is therefore obvious that the purpose of the picketing is unlawful. As we said, in the case of Miami Typographical Union No. 430 v. Ormerod, supra:

> "When picketing is carried on to further an unlawful purpose, as was correctly determined in this case, it loses its characteristic of free speech which is guaranteed by the First Amendment to the Federal Constitution. It becomes, as was stated by Professor Gregory in his work on Labor and the Law, cited

with approval by the U. S. Supreme Court in the case of Hughes v. Superior Court of State of Calif., 1950, 339 U. S. 460, 464, 465, 70 S. Ct. 718, 94 L. Ed. 985, simply a species of coercion traveling under the guise of speech for the purpose of enjoying constitutional [fol. 26] immunity * * *."

Now, Your Honor, we set out in these complaints that these people have yet to have a vote, in accordance with the statutes of this State. They are not on strike, lawfully, and on strike—the banner on those placards is unlawful, and they are falsely advertising to the people of this community and to the nation that our employees are on strike, and this is economically hurting us, and they should not be entitled to parade up and down Biscayne Boulevard and advertise that in every major city by hand bills and throw-out sheets that this hotel is on strike, when it is not, and we contend, Your Honor, that at the conclusion of this hearing, we believe we will be entitled to our injunction.

STATEMENT BY MR. GRAMLING

Mr. Gramling: If Your Honor please, the defendants in this case intend to show, first of all, that if the hotel is worth the millions that they are talking about, I do not know, at this point, which hotel—we have got three hotels —three different suits and three different subject matters—and I would appreciate it if the Court would clarify some method, so when I am talking about a case or when he is talking about a case, we will know what case he is talking about.

[fol. 27] Some of this is in common with all three—some but very little. Most of it is completely separate and apart, and there is no ground here, possibly under the laws of Florida, to consolidate the three causes.

So when I refer to a hotel, just generally, I am referring to all three hotels. Then, of course, when I get down to specific facts, I will have to name the hotels, and I trust the Court will keep this record in order so that when we get to the Supreme Court, that it is not the wild confusion that resulted in this thing that they referred to as

an opinion, dated yesterday, which is based upon nine different cases—two of them not even in the Supreme Court.

And yet, that is the state of the record that got up there. So I request, at this time, by interlineation, please help us, if you will, please, sir, to keep the record straight so there can be an appropriate review.

Now, we will start by showing if any of these three hotels enjoy the good will that they brag about. It is not all capital that did it. There has been the contribution of good, loyal, capable employees also, that have gone to make [fol. 28] it a working institution, that dealt with the public, to the satisfaction of the public, and when capital comes in and complains, "I have got a big investment"—yes; labor has a tremendous investment, too.

Secondly, they keep harping that there is—that a "carpet bagger" came down from the north to give trouble to people, such as old, long-time citizens, as Abe Allenberg, A. Birenbaum, Morris Rosenberg, and Morris Fisher, and Levis and this, that and the other, and I am not going any further into that.

But now, to straighten the record, the three officers named in this case are Al Berlin, a resident of Florida and of Dade County for 32 years; Clarence Smith, a resident for the past 18 years and a licensed contractor and a sturdy citizen of the community; and Henry Mischel, a resident of Dade County for 18 years, a taxpayer and a voter, and a family man with a home.

They say that this new and "embryonic" union was formed just this year, as a matter of fact, on March 1, 1954, with a membership of approximately 1300 members; this union was separately chartered from Local 133; it was with us for 25 years. There is nothing "embryonic" [fol. 29] or new about this particular group or this particular charter or this union.

We will show that, consistently, throughout the years, these respective employers have denied to their employees the statutory guarantee of 447.03, which assures these people of the right of representation by agents of their own choosing, in matters of labor contracts governing wages, hours, working conditions, representation and all of that.

We will show that the employer has frustrated every effort to perfect that collective bargaining, which is known and recognized and referred to in Article No. 12 of the Declaration of Rights of the Constitution of the State of Florida, and by this very proceeding tonight attempt to further frustrate thousands of citizens by depriving them of the constitutional guarantee of freedom of speech, as is recognized by Article 1 of the—I mean Amendment 1 of the Constitution of the United States of America.

And while doing this, the plaintiff, far from being without knowledge of any labor dispute, has been besought, has been begged, has been coaxed to represent—I mean, to meet with representatives of his employees, and has [fol. 30] expelled those representatives from the premises saying, "I will not talk to you. Get out."

We will show that they have indulged in unfair labor practices of going around and demanding of an employee, as an incident to retaining his job, that the employe sign a "yellow dog contract" as a prerequisite to making a living in this so-called democratic area that we live in.

We will show, that with all of the negotiations or efforts of negotiations, with all of the coaxings that we have done, that by the thousands the employees of those hotels have signed these cards designating this union, begging this union to represent them—because why? Because they, as individual employees, cannot talk to the boss; and, as exhibit "A", I will refer to the several hundred people out here in the audience tonight to whom this is life and death and blood, and the right to eat their meals tomorrow, on Sunday, at home.

Now, they say false bannering. At the expiration of the testimony, of course, the Court will decide how false it is, when we say, "This place refused to negotiate, or this place is on strike."

Now, they say that we, in effect, thumbed our nose at the laws of the State of Florida by not having a secret [fol. 31] ballot and an election.

I would like to indicate this to the Court. There has been a ballot. There has been an election—a strike ballot, if you please, by secret ballot, and an overwhelming majority of each of these hotels have voted to go on strike, and have authorized their union to go on strike.

Now, it is going to be maintained, who held the ballot or who held the election.

Your Honor, we hope to show you and make you feel, as we do that, first of all, the Florida Legislature never told how to have a ballot, in the first place; never said who would hold it—whether it would be a chancellor, the city commission, the county commission—somebody that you could call in off the street, or a radio announcer. Florida never set up the machinery.

We did the best we could and we had a ballot, secret ballot, that we will prove to you, today, as we do under the inadequacy of the legislative enactments on the subject.

Secondly, they will say to you that we did not certify to the employers the fact that we represented the majority. I defy any living person on this earth to show me a word [fol. 32] in the laws of the State of Florida how a labor union can be certified to an employer.

There is no such provision in the laws of the State of Florida. To the contrary, the law specifically provides, and I refer to 447.03, that each separate employee is entitled to a representative of his own choosing, and his representative can act as his agent, whether or not a majority of his fellow employees have so designated that same agent.

And as Mr. Justice Hobson wrote, in the case of the Miami Laundry Company versus Laundry Linen Drivers—the right to designate a bargaining agent is a personal right, personal to the individual; yet, nonetheless, we say, we will go further than the laws of the State of Florida require and we will show you that we still represent a majority. We will bring in their authorization cards. We will give you the results of a ballot.

How else? We can make a fair showing with our hands turned upward, to show you that these people out here that work in these hotels, want to be heard via an A. F. of L. union. How else can they go about it?

[fol. 33] We do not know, because we have done all that the laws of Florida require—more than they require.

And, Judge, while we are doing it, somebody is changing the rules while we are trying to play the game. And now, I refer to that portion of my colleague's argument where he said there are four prerequisites to peaceful picketing.

Judge, when we started this legislation, there were two prerequisites: one, it had to be peaceful; and second, it had to be for a lawful purpose.

When we get embarked upon the game and we are following the blueprint laid down by the Supreme Court of Florida, and we are halfway through the show, somebody pops up with the theory, now, there are not two; you made those two, but we have added a couple more. We have added two. The two we have added are, you have got to show that you represent a majority of the employees by judicial fiat.

The legislature would not pass it, but now we have a judicial fiat that requires it and, fortunately you have got to tell the boss why you do not like him, why you are having trouble with him, and give him an opportunity to recant, if [fol. 34] he will—although just two years ago they held that was a legislative function and there was no such law requiring it and no notice was required.

We come here tonight and state to you, sir, that even though they changed the rules of the game while we are playing it, and they made four prerequisites where there were two, we can meet all four tonight, and we are ready to listen to the plaintiff, and then satisfy you on those four grounds.

Mr. Barkdull: May I proceed, Your Honor?

The Court: Yes.

Mr. Barkdull: Mr. Allenberg, please take the stand.

The Court: I presume Mr. Allenberg's testimony is being offered in the case of Allenberg, and others, versus the union.

Mr. Barkdull: Yes, sir.

Thereupon—ABE ALLENBERG was called as a witness on behalf of the plaintiff, Miami Colonial Hotel, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Barkdull:

Q. Please state your name.

[fol. 35] A. Abe Allenberg.

Q. Where do you live?
A. 146 Biscayne Boulevard.
Q. That is a hotel?
A. Yes.
Q. Which one?
A. Miami Colonial.
Q. Are you connected with that hotel?
A. Yes, sir.
Q. In what capacity?
A. General Manager.
Q. How many rooms are there in that hotel?
A. About 190.
Q. How many employees do you have?
A. Approximately 60.

Mr. Gramling: I object, if Your Honor please, to the question, "How many employees do you have?" I would ask, perhaps it may be rephrased as, "How many service employees do you have that would be affected by this particular dispute?" and leave out all the representatives of management and department heads and people like that.

Mr. Barkdull: Your Honor, if he wants to clarify——

The Court: Objection overruled.

[fol. 36] By Mr. Barkdull:

Q. Mr. Allenberg, in recent weeks, have your employees approached you with any dispute as to working conditions?
A. No, sir.
Q. Have your employees advised you that the Hotel Employees Union Local 255, A. F. of L., represents them?
A. No, sir.
Q. Has the Hotel Employees Union made any demands upon you for improvement of working conditions for your employees?
A. Not until 11:00 o'clock this morning, did I talk to them.
Q. What happened at 11:00 o'clock this morning?
A. Mr. Gonzalez, who said he was their representative of Local 255, came in to my office with three employees of the hotel, who acted as a committee, and asked me whether they could take a vote of the employees, as to whether or

not I wanted Local 255 to represent the employees in negotiating with me for them.

Q. What did you tell them?

A. I told them that I was a member of the firm, and that I would discuss it with my associates, and that I would have an answer for them by Monday noon—this was Saturday afternoon, and Sunday and Monday and I would tell [fol. 37] them what I can do.

Q. What happened then?

A. They said they would go outside and discuss it and they would come back and let me know.

Q. Did they?

A. They did.

Q. What did they say?

A. They came back in a few minutes and they said they would wait until 12:00 noon, Saturday—today—and that was an hour after they were there, and if I could not comply with those demands, they would have to call a strike.

Q. Did they?

A. They did. The (sic) called a strike at or about 12:00 o'clock today.

Q. Do those pickets carry banners?

A. They are.

Q. What do those banners say?

A. "This hotel is on strike, Local 255, American Federation of Labor."

Q. Mr. Allenberg, I know that you only had this picket line for approximately nine hours, but have you noticed any effect on your operation of your hotel, economically?

A. I'd say very few people have come into the hotel since the picket lines have been walking up around there. [fol. 38] Q. Has the current labor unrest and strike situation at the various hotels, and in Greater Miami Area, had any general effect on your business?

A. Yes.

Mr. Gettler: I object. We are only trying the case of the Miami Colonial; not the cases of other hotels in the Miami Area.

The Court: Read the question.

(The pending question was thereupon read by the Reporter as above recorded.)

The Court: Objection sustained.
Mr. Gramling: I move to strike the answer.
The Court: Granted.
Mr. Barkdull: That is all.

Cross examination.

By Mr. Gettler:

Q. Mr. Allenberg, you state that you live at the Miami Colonial Hotel?
A. Yes, sir.
Q. Is that your permanent residence?
A. I live there; that is right.
Q. Is that your permanent residence?
A. I have an apartment on Miami Beach.
Q. Is that your permanent residence?
A. It is, either one or the other. I have a residence there, [fol. 39] and I have a residence at the hotel—both places.
Q. Where do you vote, Mr. Allenberg?
A. I vote on Miami Beach.
Q. Now, do you have various departments in your hotel?
A. No; we have no apartments.
Q. I say, departments; various departments.
A. Yes; departments.
Q. What are those departments.
A. Well, we have a bell man's department; we have an elevator department, we have an auditor's department, front office clerk's, cashiers, engineers, foremen, maids, and I think that encompasses all of them.
Q. Mr. Allenberg, how many bell men do you have employed in your establishment?
A. Approximately 7 bell men.
Q. How many elevator employees do you have?
A. Six.
Q. How many door men are employed?
A. Two.
Q. How many maids are employed?
A. Well, the maids shifted around, perhaps.
Q. Permanent employees?
A. About, I'd say, 12 maids.
[fol. 40] Q. About 12 that are permanent?

A. Yes.
Q. Do you have a dining room at all, Mr. Allenberg?
A. Yes; coffee shop.
Q. You have a coffee shop?
A. Yes.
Q. What type of employees do you have in the coffee shop?
A. We have a room service waiter, and we have two waitresses, bus boy, chef, dishwasher and a man who helps to clean up.
Q. That is a total of six employees in the coffee shop.
A. Approximately.
Q. How many engineers do you have employed at the hotel?
A. Two.
Q. You stated there are front office employees. What are front office employees?
A. Desk clerks, cashiers, and then there are telephone operators.
Q. How many desk clerks are there, Mr. Allenberg?
A. We have four.
Q. How many telephone operators?
A. Three.
[fol. 41] Q. What other groups did you say?
A. Cashiers.
Q. How many of those?
A. Two.
Q. Have I left out anybody in your front office group?
A. No.
Q. Mr. Allenberg, do you know a man named Don Bizzrio?
A. Yes.
Q. Who is he?
A. He was bell captain.
Q. Is he employed by the Miami Colonial?
A. He was employed by them.
Q. Until when?
A. Until he walked off his job today.
Q. In other words, he is on strike now?
A. That is right.
Q. How long was he employed by the Miami Colonial?

A. Well, I have been—I have been in the Miami Colonial since October, 1953, and he was there when I came there.

Q. Did you have any conversation with Mr. Bizzrio in regard to union representation?

A. Yes, I had.

[fol. 42] Q. And when did those conversations occur?

A. He talked to me many times.

Q. Has he talked to you particularly often in the last few weeks?

A. He has.

Q. Has he indicated to you that the employees desire the union to represent them?

A. He has not. He told me that he was not going to go along with the union; that he was with me; that I had never done anything to him, and that I had never done anything to any of the boys, and they were going to stick with me.

Q. You had conversations, though, with him about a union, had you not?

A. We discussed the union.

Q. You discussed the union?

A. Yes.

Q. What union were you discussing?

A. I guess union 255.

Q. When did you first start discussing union 255?

A. I guess when this trouble first started, on Miami Beach.

Q. Which would be approximately when?

A. About six weeks ago.

Q. So, over a period of about six weeks, you have been talking, off and on, with Don Bizzrio, at least one of your [fol. 43] employees, about the possibility of Local 255 representing the employees; is that right?

A. No, sir, I have not.

Q. During the last six weeks, you have known that Local 255 represented some of your employees.

A. I have not known that; no.

Q. Do you know that there has been organizing going on among your employees, do you not?

A. No, sir.

Q. Didn't Mr. Bizzrio advise you that some of the employees joined Local 255?

A. He did not advise me of that until yesterday.

Q. Yesterday he did advise you?

A. Yes.

Q. And so, yesterday, at least, you knew that some of your employees had joined Local 255?

A. I did not know about some of them. I know that he had.

Q. You knew he had?

A. Yes.

Q. You knew at least one had.

A. That is right.

Q. And did he tell you why? Did he tell you he had any complaints?

A. No, no; he had no complaints at all.

[fol. 44] Q. Since you have been in the hotel, October, 1953, you had no complaints of any kind from your employees?

A. No, sir.

Q. None whatsoever?

A. No, sir.

Q. Would all complaints come to you, Mr. Allenberg?

A. They would.

Q. Who is Mr. Denny Norman?

A. He is a bell man at the hotel.

Q. How long has he been employed at the hotel?

A. He has been there since I have been there.

Q. In other words, he was there when you came.

A. I am pretty sure he was.

Q. And who is Mr. Chris Anderson?

A. He is a bell man at the hotel.

Q. How long has he been there?

A. Since I have been there.

Q. He was there when you came?

A. Yes.

Q. Presumably, he was there longer than that?

A. Yes.

Q. Did Mr. Norman and Mr. Anderson advise you that they joined Local 255?

A. No, sir.

Q. Did Mr. Norman and Mr. Bizzrio and Mr. Anderson [fol. 45] appear at a meeting with you, in conjunction with

Mr. Gonzalez, who told you that he was representing Local 255?

A. At 11:00 o'clock this morning, Mr. Chris was not there, but Mr. Bizzrio was there and some other man was there that works for the hotel, whose name I do not know, and Donny was there, or Denny.

Q. I am sorry. I did not catch those names. Repeat it.

A. The gentleman that begins with a "D"—Donny.

Q. Donny Norman?

A. Donny Norman.

Q. And who else?

A. Don.

Q. Don Bizzrio?

A. Yes; another employee of the hotel whose name I——

Q. Was Chris Anderson there?

A. Chris was not there.

Q. Do you know what department the other employee was from?

A. He was a door man.

Q. Mr. Allenberg, do you know a gentleman named Mr. Al Berlin?

A. I do; yes.

Q. Who is he?

[fol. 46] A. Mr. Berlin, as I understand it, is a member of Local 133.

Q. Mr. Berlin, you also know, is an officer of Local 255.

A. I do not know that.

Q. Have you had a conversation with him in the last few weeks?

A. He called me up, I think it was about ten days ago.

Q. What was the purpose of that conversation?

A. He just called up in a friendly way, and he said he was surprised he had not heard from me in a long time and——

Mr. Sibley: If Your Honor please, may we suspend for a moment? We would like to confer with Mr. Gramling for a moment. Would Your Honor give us a minute?

The Court: Yes.

(Short recess.)

By Mr. Gettler:

Q. Mr. Allenberg, did Mr. Berlin tell you to stop annoying the employees and to sit down and negotiate with this union?

A. No, sir; he did not.

Q. How many times, during the last ten days, have you [fol. 47] spoken with Mr. Berlin?

A. Just that time on the phone.

Q. And there was nothing in that conversation concerning your employees?

A. Not a thing. He simply said, "We have been old friends and why don't we get together and chat again, and we do not have to beat about business."

Q. What was——

Mr. Sibley: Let him finish.

Q. Go ahead.

A. He said, "I will come over any time you say and we can sit down and talk things over." There was nothing said about union or strike.

Q. What did he want to talk over?

A. I would not have any idea what he would want to talk over.

Q. You did not know what the conversation was about, what he wanted to talk over?

A. I would not know.

Q. You did not know, as a matter of fact, that he wanted to talk—negotiate with you for Local 255?

A. No; I would not know that. He might not have wanted to talk about that at all.

Q. Do you mean to say, Mr. Allenberg, that you had no knowledge that Mr. Berlin was talking to you about [fol. 48] negotiating on behalf of your employees?

A. That is correct.

Q. What was he talking to you about, then?

A. I have known Mr. Berlin for many years. He could have wanted to talk to me about anything, and I would not know.

Q. You did not ask him what he wanted to talk about?

A. No; I did not.

Q. Just a friendly conversation?

A. That is all.

Q. I would like to talk——

A. I told him, at that time, I had had a kidney attack and I was not feeling very good, and I did not feel like talking to anybody.

Q. When was the last time that you spoke with Mr. Al Berlin?

A. That one time.

Q. When was that?

A. I would say about ten days ago.

Q. And when was the last previous time that you spoke with Mr. Al Berlin—previously?

A. It could have been six months ago.

Q. No conversation between ten days and six months? [fol. 49] A. No, sir.

Q. Mr. Allenberg, you stated, on your direct examination, that at 11:00 o'clock this morning, you were requested by this delegation of your employees, accompanied by Mr. Gonzalez, to consent to an election among your employees, to determine whether they wanted Local 255 as their bargaining representative?

A. That is correct.

Q. And they asked you to abide by whatever the results of that election would be.

A. Yes.

Q. What is your position now, Mr. Allenberg?

Mr. Sibley: I object to that, upon the ground that it is immaterial and irrelevant.

Mr. Gettler: Your Honor, this complaint is based upon the fact that Mr. Allenberg states they have no quarrel, and we are going to show that Mr. Allenberg is still refusing. He refused this morning and is refusing again.

Mr. Sibley: After my good friends here have thrown their picket line up and have taken their chances, if they lose, let us let them lose. They do not have any right—I think, Your Honor, now—to attempt to build up a right to throw up a picket line, by the examination of this wit- [fol. 50] ness. He has no legal duty to make such a choice at the present time.

There is no legal obligation upon him to permit Local 255 to conduct an election at his hotel, to determine whether or not his employees want Local 255.

That is not the import of that opinion at all.

Actually, if they represent 255, it is their obligation and duty to approach the employer and establish, by proof, that they represent a majority of the employees, and submit that to the employer.

If they do not have that proof, and they have no right to attempt to place a burden on the employer of furnishing them a forum or a vote or anything else, in an effort that they might establish their right to represent the employees.

The Court: I do not think the employer has to answer until he is informed of the object being accomplished.

Mr. Gettler: Well, Your Honor, Mr. Al Berlin, himself, has admitted that he was informed, at 11:00 this morning. Reluctant, as I am to agree with Mr. Sibley, I must agree that Mr. Allenberg does not need to give an election. We [fol. 51] are not trying, here, to show that Mr. Allenberg has to grant an election and agree to abide by the results of the election.

We are trying to show, Your Honor, that there is a dispute, and what that dispute is, that Mr. Allenberg is refusing to do there, and that is a legitimate labor dispute.

Mr. Sibley: He is under no duty to grant them an election, if that is not a lawful object of picketing and——

Mr. Gettler: He is under no duty to give $2.00 a year——

Mr. Sibley: Are you going to let me finish what I have got to say? Pardon me, Your Honor. Let me get through. Be a little courteous.

If Your Honor please, if there is no duty upon the employer to hold an election for the benefit of Local 255 in order that they may have an opportunity, through the employers' machinery of acquiring his employees—if there is no duty upon him so to do, then, to throw up a picket line because he refuses, renders the picket line illegal and unlawful, under the opinion before your Honor at the present time.

That is not a proper labor objective to ask of the em [fol. 52] ployer something which cannot be required of him, and which is not a fair labor objective.

Mr. Gettler: Are you finished, Mr. Sibley?

Mr. Sibley: Yes.

Mr. Gettler: Your Honor, if Mr. Sibley's statement is correct, then there is never any labor dispute, whenever an employer is not required to do a particular thing.

Let us take a typical labor dispute. Let us say something like the late Bell Telephone strike. The employees in that union were demanding that a particular clause go in the contract, that is, that the employees have a right to refuse to go—it was the basis of a dispute.

The Court: Let us be reasonable and sensible. I did not write this opinion. The Supreme Court of Florida did. And insofar as the union activities are concerned, it is duty bound to go to the employer and advise the employer of the object which the union seeks to accomplish for its members, assuming that it is the bargaining agent for the employees, to tell the employer, "This is what we want you to do," and then the employer must be given a fair opportunity to comply with the union's demands before a picket [fol. 53] line can be set up.

Now, the question that you have propounded to Mr. Allenberg is, what will his future answer be when and if the union complies with its duty—and I think the question is objectionable.

Mr. Gettler: Well, Your Honor, the question or the dispute was set even by Mr. Allenberg's testimony, at the latest, 11:00 o'clock in the morning. We will show, in addition, by further——

The Court: Surely, between 11:00 and 12:00 is not giving the employer a reasonable opportunity to meet any demands which were made at that time.

Mr. Gettler: We will show, Your Honor, that the demands were made days before that.

I would also like to call Your Honor's attention to the fact, that in the Sax opinion, that this afforded the employer a fair opportunity to engage in negotiations, not followed by the words—prior to engaging in picketing.

They were mainly in the Texas case. They are referring there to the fact that the employer was given no idea as to what the union wanted after the picketing started. He had no alternative. He did not know what to do, and the Texas Court said, "You have to give him a chance to straighten it out so we can get rid of pickets."

[fol. 54] There was no requirement, even in the Texas case that this opportunity of negotiations are afforded.

Will Your Honor rule on the question and I will proceed with further——

The Court: That is what the Supreme Court of Florida held, no matter what Texas held.

Mr. Gettler: Well, Your Honor, the Supreme Court of Florida statement is immediately followed by a citation of the Texas case, and their words are almost the same words as in the Texas case, and neither their words nor the words in the Texas case state——

The Court: It is your position to strike first and then tell the employer later.

Mr. Gettler: Our position is that that is perfectly admissible, unless the Legislature declares it, otherwise how will we show your Honor.

The Court: I cannot follow that, in view—I did not write the opinion, and that is not what the Supreme Court of Florida says. Let us proceed. The objection is sustained.

Mr. Gettler: That is all.

[fol. 55] Redirect examination.

By Mr. Barkdull:

Q. Mr. Allenberg, has anybody representing Local 255 approached you and established that they represented any of your employees, and asked you to negotiate with them?

A. No, sir.

Mr. Barkdull: That is all. Come down.

The Court: Does that complete your evidence in support of the application in the Allenberg case?

Mr. Barkdull: Yes, sir.

The Court: Do you wish to offer rebuttal in that case now?

Mr. Gettler: Well, Your Honor, we have not had a chance to talk to our witnesses since we were given this. We are ready to call our witnesses and we will go ahead.

The Court: You can let them go ahead with other cases, if you wish.

Mr. Gramling: Would the Court be so indulgent as to cause the plaintiff, who has had more opportunity, to pro-

ceed with his three cases, and then give us a ten minute recess and, frankly, my throat is getting dry, and we will get together again.

The Court: All right.

[fol. 56] Mr. Grusmark: This witness' testimony will be directed to the McAllister case, Your Honor.

The Court: All right.

Thereupon—Richard Nash was called as a witness on behalf of the McAllister Hotel, Inc., and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Grusmark:

Q. Please state your name.
A. Richard Nash.
Q. Where do you live?
A. McAllister Hotel.
Q. Do you hold any official position at the hotel?
A. Yes, sir.
Q. What is your position?
A. General Manager.
Q. Mr. Nash, how many rooms do you have?
A. 474 salable rooms.
Q. How many employees do you have?
A. An average of 180.
Q. Have you ever received any complaints from employees concerning wages or hours?
[fol. 57] A. I have not.
Q. Have you ever been approached by any representatives of Local 255 establishing that they represented employees in your hotel?
A. I have not.
Q. What type of unusual business, if any, do you have in the hotel at the present time, or in the near future?
A. A convention starting today—a national institute of banking.
Q. When does that convention come in?
A. Well, about 40 per cent of it today, and the balance of it tomorrow.

Q. Are you the convention hotel headquarters, or one of the convention headquarters?

Mr. Gettler: I object to that.
The Court: Overruled.

A. Yes, sir.
Q. Is there a picket line at the hotel at the present time?
A. There is.
Q. Will you tell us, please, sir, what the signs say that the pickets are carrying?
A. "This hotel is on strike."
Q. Were you ever contacted by any representative of the union prior to the throwing up of the picket line?
[fol. 58] A. I was not, other than 30 seconds before the picket line, three men, who did not identify themselves, and who I did not know, asked if I was Mr. Nash.
Q. What happened then?
A. I said, "Yes," and they said, "This is your last chance."
Q. And then what happened?
A. I answered, "I have nothing to say to you."
Q. Did you know the three men?
A. I never saw them before.
Q. Did they show you any evidence of representation?
A. They did not even introduce themselves. They did not—they just came up to me in the lobby, and I never saw them before. I would not know them if I saw them again.
Q. Is that the only contact you ever had with any alleged representative of the union?
A. Yes, it is.
Q. How long after they left did the strike begin?
A. Well, I would say within 15 seconds.
Q. How—can you state to the Court, sir, what effect, if any, the picketing at the hotel will have on your convention business and any other business?
A. Well, certainly, it already has.

Mr. Gramling: I object. He is now asking for some clairvoyance—what he thinks—what effect this will have.
[fol. 59] The Court: His answer was as to what had already happened.

Mr. Gramling: Excuse me.

The Witness: It already has caused a disruption in the orderly flow of reservations that were made as much as six or eight months ago.

By Mr. Grusmark:

Q. Do you have any contact with any other hotel?

A. What do you mean by that?

Q. Do you have any official position with any other hotel in the area?

A. No, sir.

Q. Were you ever advised by any of your employees that Local 255 was authorized to represent them?

A. I was not.

Mr. Grusmark: That is all.

Cross examination.

By Mr. Gettler:

Q. Mr. Nash, you said that you reside at the McAllister Hotel?

A. That is right.

Q. Is that your voting residence?

A. No, sir; it is not.

Q. Where is that?

[fol. 60] A. Ashville, North Carolina. I have not been here long enough to establish a voting residence here, yet.

Q. How long have you been the general manager of the McAllister Hotel?

A. Since October 17, 1954.

Q. Does the hotel have various departments?

A. Yes.

Q. What are those departments?

A. Well, we have a coffee shop.

Q. I will stop you as you name each one, and ask you certain questions about them. In your coffee shop, what type of employees do you have, and how many do you employ?

A. What do you mean; what type?

Q. What type of employees are there in the coffee shop—waiters, waitresses or what?

A. Waitresses and bus boys.

Q. There are waiters, waitresses, bus boys.

A. I did not say, "waiters." I said waitresses and bus boys.

Q. How many waitresses?

A. That I cannot tell you, because our business varies from time to time, and even from day to day.

Q. You have regular employees, do you not?

A. Yes.

Q. How many regular waitresses do you have?

[fol. 61] A. That I could not break down to you, because I would have to break it down into categories of three different meals, and that I do not know.

Q. How many regular employees do you have in your coffee shop?

A. That I cannot tell you. I do not handle those details, as general manager of the hotel.

Q. Who does, Mr. Nash?

A. Well, who keeps track of the number of employees?

Q. Who would know how many regular employees you have?

A. That would have to be ascertained from our payroll.

Q. Do you have that with you?

A. No.

Q. Can you count the number of employees on the payroll—did you count the number of employees on the payroll before you came into Court?

A. No.

Q. Before you came into Court, did you count them?

A. No.

Q. Did you count them yesterday?

A. No.

Q. Did you count them last week?

[fol. 62] A. I get a daily report that shows me the average number of employees that we have, but I do not count them.

Q. What do you mean by the average number of employees that you have on that particular day?

A. On what particular day are you talking about?

Q. Did you get a report today telling you how many employees you have on your payroll?

A. I had a report today, which I have not seen.

Q. And did it tell you how many employees you have on your payroll today?

A. How many employees I had on my payroll yesterday.

Q. How many—you have not seen that yet?

A. Not today.

Q. Yesterday, which was Friday, you got a report which showed how many employees you had on your payroll on Thursday?

A. Yes.

Q. How many employees was that?

A. If my memory serves me correctly, it was 180.—

Q. Do you have supervisory employees?

A. We do.

Q. Approximately how many?

A. I have a resident manager, a sales manager, two assistant managers, and department heads of the several different departments.

[fol. 63] Q. How many department heads are there?

A. Well, there is a catering manager, there is a housekeeper, there is an auditor,—I think that generally covers it.

Q. Do you have someone who is the head of the coffee shop?

A. A head of the coffee shop, yes; a catering manager. That is a sub-department of the catering department.

Q. Do you have any secretaries employed at the hotel?

A. Yes.

Q. How many?

A. Two that I would classify as secretaries.

Q. Do you have payroll clerks?

A. That would come under our auditing department.

Q. How many people are in your auditing department?

A. That is very difficult to answer; in various categories and breakdowns—in the auditing department, it is the auditing department which exercises supervision over certain employees, and in other departments. There are seven.

Q. And are there members of the auditing department in other departments; do I understand that?

A. No.

Q. Do you employ engineers?

A. We do.

[fol. 64] Q. How many of them do you have?

A. That department also has to be broken down into categories.

Q. How many in the entire department, without breaking it down?

A. Roughly, nine. I cannot say exactly.

Q. Do you employ any electricians?

A. That would come under the engineering department.

Q. Painters?

A. That comes under repairs and maintenance.

Q. Mr. Nash, in your figure of 180, have you included banquet waitresses who only work on Thursdays for banquets?

A. No.

Q. You stated that you got your figure from your Friday payroll which included Thursday.

A. I said I got—I said that I got the figure from the average number of employees normally employed at this time of year. My recollection possibly could be a coincidence—it was 180.

Q. Well, did you make an actual mathematical determination or calculation of that figure, or is this just your best——

A. It is my recollection of the total figure of my daily [fol. 65] reports.

Q. In other words, this average, you state, is your guess based upon——

A. I do not think I would say it is a guess. By my best judgment, that is the average number at this time of year.

Q. Do you have a security department?

A. Yes.

Q. How many people are in that entire department?

A. You mean, as of now or as of Tuesday?

Q. As of prior to the strike.

A. Two.

Q. Mr. Nash, calling your attention to Tuesday, May 10th, at approximately 11:00 A.M., were you approached by anyone who advised you that he was there on behalf of your employees, who were members of Local 255?

A. I was not.

Q. Do you recall being approached on Tuesday, May 10th, by a Mr. Henry Mischel, accompanied by Mr. Dan Beauchamp?

A. I do not know either one of those gentlemen.

Q. Is it your testimony, Mr. Nash, that you do not recall on Tuesday, May 10th, that anyone coming up to you in the lobby, or in your office, and telling you that they were there from Local 255?

[fol. 66] A. I had a gentleman stop me in the lobby, on my way up to my office, and I cannot tell you, naming one gentleman, who said that he wanted to talk to me; that he was from the union, and I said, "I have nothing to say to you." He said, "I am on the convention committee of the Elks convention." I said the same thing. I continued on my way. That was the entire conversation. He did not identify himself, and I did not know him, and I do not know his name. I would not know him if I saw him again.

Q. Then, as a matter of fact, you did at some time talk to someone who told you they were from Local 255.

A. No one ever told me they were from Local 255.

Q. Well, he said he was from a union.

A. Yes.

Q. What did you understand? Did you understand that to mean Local 255?

A. No; I did not know whether it was Local 255 or what it was.

Q. Did you mean—did you understand that to mean the hotel union?

A. No.

Q. You have an assistant manager, do you not?

A. That is right.

Q. What is his name?

A. Well, I have several assistant managers. Which one [fol. 67] do you refer to?

Q. Mr. Nash, have you ever been requested to come to a meeting of Mayor Aronovitz of Miami?

A. A direct invitation to come to a meeting?

Q. A direct or indirect, or any other way.

A. I was told that there was to be a meeting with Mayor

Aronovitz at a time which was not convenient—in fact, impossible for me to go.

Q. Did you or did you not go to that meeting?

A. I did not.

Q. Have you gone to any meeting with Mayor Aronovitz, at which the question of the dispute between your hotel and Local 255 was discussed?

Mr. Barkdull: I object to the question. It was never established that the Mayor represents Local 255.

Mr. Gettler: We are trying to show notice of a dispute.

The Court: Objection sustained.

Mr. Gettler: Your Honor, if we can show there was a meeting at which Mr. Nash was advised of this dispute——

The Court: Why should he have to go to a meeting suggested by Mayor Aronovitz?

Mr. Gettler: I am asking if he did go, Your Honor; [fol. 68] if he found out.

The Court: It makes no difference whether he did or did not.

Mr. Gettler: As I understand Your Honor's previous statement, we are supposed to show Your Honor that Mr. Nash, or any of the hotels, was given notice, that there was a dispute; and if we gave notice——

The Court: It makes no difference whether he is given notice by the Mayor of Miami, if the union, representing the employees, wishes to negotiate with management of the hotel, that is one matter. But he is not supposed to be going around town accepting invitations of every politician who pretends to be a mediator or peacemaker.

Mr. Gettler: As I understand the basis for this requirement, Your Honor, is so the hotels can have an opportunity —a fair opportunity to correct the situation, and they cannot come to a Court of equity and say, "We do not know the situation exists."

The Court: Let us end the argument. Objection sustained.

Mr. Gettler: Exception.

The Court: No exceptions are necessary.

[fol. 69] Mr. Gettler: That is all.

Mr. Grusmark: Again, this is in relation to the McAllister Hotel. Mr. Dolan.

Thereupon—Richard J. Dolan was called as a witness on behalf of the plaintiff, McAllister Hotel, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Grusmark:

Q. Please state your name.
A. Richard J. Dolan.
Q. Where do you live?
A. Biscayne Park.
Q. Do you hold any position with the plaintiff, McAllister Hotel?
A. Executive assistant to Mr. J. Meyer Schine.
Q. Were you at the hotel premises at the time the strike took place at 3:00 o'clock on Thursday?
A. I was.
Q. A few days ago.
A. I was.
Q. Where were you in the building at the time?
A. I believe, at 3:00 o'clock, I was in front of the building, on Biscayne Boulevard.
[fol. 70] Q. Have you been connected with any other hotels in which a strike has taken place, or a walkout has taken place?
A. I am general manager of the Roney Plaza Hotel, on Miami Beach.
Q. Mr. Dolan, I show you a photograph and ask you whether you recognize the locale and the scene?
A. This picture was taken at approximately 3:00 o'clock, on the afternoon of the strike, on Biscayne Boulevard, in front of the McAllister Hotel.
Q. Were you present, sir?
A. Yes.

Offers in Evidence

Mr. Grusmark: We tender in evidence the photograph as Plaintiff's Exhibit No. 1.
Mr. Gettler: No objection.

(The document referred to was thereupon marked Plaintiff McAllister Exhibit No. 1.)

By Mr. Grusmark:

Q. I show you another photograph, and ask you whether you recognize that one?

A. This was also taken on Biscayne Boulevard, in front of the McAllister Hotel, at the same time.

Q. Were you present then?

A. Yes, sir.

Mr. Grusmark: We tender this photograph identified [fol. 71] by the witness as Plaintiff's Exhibit No. 2.

Mr. Gettler: No objection.

(The document referred to was thereupon marked Plaintiff McAllister Exhibit No. 2.)

By Mr. Grusmark:

Q. I show you a third photograph, and ask you whether you recognize the situation there?

A. This picture was taken in the rear of the McAllister Hotel, opposite the employees' entrance, at about 3:30 that same afternoon.

Q. Were you present at the time that photograph was taken?

A. I was.

Mr. Grusmark: We tender the photograph in evidence as Plaintiff's Exhibit No. 3.

Mr. Gettler: Note our objection to this Exhibit.

Mr. Grusmark: On what ground?

The Court: You have no objection to any of the others?

Mr. Gettler: No objection to the first two, your Honor.

The Court: Let me see the one to which he raises an objection.

[fol. 72] Mr. Gettler: This, as I understand it, is the third one, which is across the street, your Honor, and I can see no relevancy to its introduction because——

Mr. Grusmark: The witness stated that it was on the rear of the McAllister Hotel. Is that the same side of the street?

The Witness: It is on the other side of the street, opposite the employees' entrance.

Mr. Gettler: Note my objection.

The Court: Objection sustained.

By Mr. Grusmark:

Q. Do you recognize this photograph?

A. Yes, I do.

Q. Will you tell us what that is, please, sir?

A. That is opposite the employees' entrance at the rear of the McAllister Hotel.

Q. Let me show these two to you again and ask you to look at them and see where they both are?

A. This is directly opposite the employees' entrance, and this is a little to the—I believe it is the east of the employees' entrance. This is directly opposite. I recall the picture when Mr. Gonzalez was halfway across the street.

Q. And this one, sir, pointing to one at the beauty [fol. 73] salon?

A. A little to the—I believe it is the east, towards Flagler Street.

Q. On which side of the street?

A. Across the street, from the rear of the McAllister.

Mr. Grusmark: I enter the third one for the record.

Mr. Gettler: Note my objection, on the same grounds that it is across the street from the hotel, and at 3:30 on a Saturday afternoon, in downtown Miami.

Mr. Grusmark: Your Honor, these——

The Witness: That is the day of the strike; not Saturday afternoon.

Mr. Grusmark: Your Honor, these exhibits are being entered for the purpose of showing the situation at the time of the strike, the gatherings across the street, the obvious effect it would have on people walking in and out of the hotel, in view of the allegation in the complaint that throngs were gathered and congregated outside the hotel at the time of the strike. That is the purpose of the exhibit. This is at the time of the strike; it is not on Saturday afternoon.

[fol. 74] The Court: Objection sustained.

By Mr. Grusmark:

Q. Mr. Dolan, let me show you the last one.

A. It is in front of the McAllister Hotel, at approximately 3:00 and 3:30, the afternoon of the strike.

Q. Were you present then?

A. Yes, sir.

Mr. Grusmark: I offer that as Plaintiff's Exhibit No. 3.

Mr. Gettler: I have no objection to that one.

(The document referred to was thereupon marked Plaintiff McAllister Exhibit No. 3.)

By Mr. Grusmark:

Q. Do you know who the principal stockholder is in the plaintiff's corporation, the McAllister Hotel?

A. No, I do not.

Q. What position does Meyer Schine hold in the hotel, in the corporation?

A. I am not familiar with Mr. Schine's position in the McAllister Hotel, Inc.

Q. Who is there, in the hotel's hierarchy who is your superior?

A. I am directly responsible to Mr. Schine in connection with the McAllister Hotel.

Q. When any mail is directed to Mr. Schine or telegrams or calls at the McAllister Hotel are directed to Mr. Schine, [fol. 75] to whom do they go?

A. It would generally be referred to my attention.

Q. Did you receive any notification from Local 255 establishing the right to representation of employees of the McAllister Hotel?

A. None whatsoever.

Q. Did you receive any notification from any of the employees of Local 255 whom they represent?

A. None whatsoever.

Q. Did you receive any requests to forward any requests for authorization to representatives for presentation to Mr. Schine?

A. We did not.

Q. Mr. Dolan, you stated that you hold a similar capacity at the Roney Plaza Hotel?

A. That is correct.

Q. Are the two hotels run jointly, in any way, other than your own position?

A. They are not.

Q. You have been through a strike situation at the Roney Plaza Hotel. Can you tell us whether that has had any effect upon business at the Roney Plaza?

Mr. Gettler: I object.

Mr. Grusmark: I think the Court can take judicial notice [fol. 76] of the fact that a situation like this will result in similar effects, economically.

The Court: Objection overruled.

Mr. Gettler: Your Honor, this is with regard to an entirely (sic) hotel, in a different city.

The Court: That is what he said—Roney Plaza and the McAllister.

Mr. Gettler: I am sorry. I thought the question was whether there was any effect on the Roney Plaza, alone.

The Court: I know that they are two different hotels.

Mr. Gettler: I fail to see what possible relevancy it can have at the McAllister, if there is a failure of business at the Roney Plaza involving a different corporation.

The Court: Well, it is in the same area. One hotel may be the same as another.

The Witness: This strike at the Roney Plaza has had a very serious effect on the operation of the hotel. It affects our daily operation, and it seriously affected our future operation. We had been forced to devote our time, for the last six weeks, to take emergency measures to combat normal every day operations, instead of devoting our time to the proper development of future business. It also seriously [fol. 77] affected the daily business, because of the fact that people are not coming to the hotel, nor our various rooms, and they are not coming for beverages, and they are not coming to our dining room. They have a feeling that the hotel service will be impaired. They do not come to the hotel to book weddings, and they do not come for any of

the normal sources of revenue, which a hotel must have to exist.

Q. In the McAllister Hotel, Mr. Dolan, are you pretty well booked up for the convention?

A. We expect to run, we did expect——

Mr. Gramling: I object.

The Witness: —one hundred percent occupancy by tomorrow night.

Mr. Gramling: Just a minute. Let me get an objection in. I object to his testimony, to testifying as to what he expects. And if I may, sir, respectfully represent, he is not even talking, now, as I understand it, about the McAllister Hotel.

The Court: He is talking about a convention that is in progress now at the McAllister Hotel. That is what he said.

Mr. Gramling: Pardon me, sir. As I understand it, is it true that he works for Meyer Schine, and he runs the [fol. 78] Roney Plaza, and he has been talking about business at the Roney Plaza and, now, certainly, as manager of the McAllister, to testify about the McAllister, and the purpose of that is to——

Mr. Grusmark: We will withdraw the question.

Mr. Gramling: Let us be sure which hotel we are trying.

The Court: The question is withdrawn. The witness just said he was talking about the McAllister Hotel.

Mr. Grusmark: I will withdraw the question.

By Mr. Grusmark:

Q. State if you saw anything unusual in the hotel Thursday afternoon when the strike broke out?

A. Well, the first thing I noticed was a gentleman who I know as Mr. Smith, of Local 255, and this gentleman in the second seat in the front row of the jury box—I cannot recall his name—and a third gentleman walking down the steps at the McAllister Hotel, and I believe it was Mr. Smith who waved his arms and said, "Come on, boys, the strike is on."

Immediately, some loiterers who were in two cars had drawn up to the curb pulled out some picket signs, and proceeded to parade up and down.

I would say there were about 15 in number, and they [fol. 79] created a very disorderly line and interrupted the normal traffic on Biscayne Boulevard.

Mr. Gramling: I object, your Honor, to his saying, "Disorderly."

The Court: The motion to strike the word, "Disorderly," is granted.

Mr. Gramling: Thank you, sir. I also noticed, if your Honor please, that the witness is testifying apparently, from some documents that he is glancing at, from time to time.

The Witness: No documents.

Mr. Gramling: And shuffling them as he goes along.

Now, I wish he would either identify what he is testifying from, or else testify only from memory.

The Court: Well, is that in the nature of an objection? I do not see anything unusual. You may see what he has got there in his hands.

Mr. Gramling: If I may, sir, because when people are testifying from something in their hands, I would like to know what it is.

Mr. Grusmark: We will put them all in evidence, if you want.

Mr. Gramling: This is the most scandalous thing—no further objection of that sort.

[fol. 80] By Mr. Grusmark:

Q. What happened inside the hotel, if anything?

A. Immediately, three gentlemen walked down the steps, and one gentleman proceeded to go into the coffee shop and to holler, "This place is on strike, and get out—everybody get out."

I accosted him and asked him to please leave the premises, as there was no reason for his being in there.

He stated that he had no intention of leaving. He was going to proceed through and out the arcade side of the McAllister.

He went into the bar and told the boys in the bar the same thing, to get out, "This hotel is on strike," and pro-

ceeded without too much further conversation, to leave the premises.

At the same time, shortly thereafter, at the front entrance, a gentleman who had been previously identified in other hearings as Pinky—he emerged from the hotel, where I was later told by the house security officer, he had been doing the same type of job on the floors of the hotel.

Mr. Gettler: I object to what he was told by the house security officer.

The Court: Objection sustained.

Mr. Grusmark: That is all.

Mr. Gettler: No questions.

(Witness excused.)

[fol. 81] Mr. Barkdull: Your Honor, that concludes our testimony on the McAllister Hotel, and we are ready to go into the Biscayne Terrace, and I assume the other gentlemen want us to proceed.

Mr. Gramling: Yes.

Thereupon—Val Rosas, was called as a witness on behalf of the plaintiff, Biscayne Terrace Hotel, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Barkdull:

Q. Please state your name.

A. Val Rosas.

Q. Where do you reside?

A. 316 Biscayne Boulevard.

Q. Is that a hotel?

A. Yes.

Q. Which hotel?

A. Biscayne Plaza.

Q. Is that connected or run in conjunction with any hotel?

A. It is run in conjunction with the Biscayne Terrace Hotel.

Q. Do you hold an official capacity in the Biscayne Ter-
[fol. 82] race Hotel?

A. I do.

Q. What is that?

A. Resident manager.

Q. How many rooms do you have in the hotel?

A. Two hundred.

Q. Approximately how many employees?

A. That, I do not know.

Q. Have your employees ever advised you that Local 255 represented them as their bargaining agent?

A. They have not.

Q. Has any member identified himself as representing Local 255, and established to you that he represented his employees and demanded that you improve certain working conditions?

A. No.

Q. Do you have a picket line at your hotel?

A. I do.

Q. When was it put up?

A. About 3:00 o'clock yesterday.

Q. Friday?

A. Between 3:00 and 3:15 on Friday.

Q. At the time the picket line was put up, did anybody enter your hotel and disrupt the service?

A. I did not see anyone.

[fol. 83] Q. What does the banner that the pickets carry on your hotel, say?

A. "This hotel on strike."

Q. Approximately how many pickets do they have on the picket line, or how many did they have on the picket line when they put it up.

A. Fourteen.

Q. You have previously heard the gentleman from the McAllister talk about the bankers' convention. I will ask you if your hotel is also a convention hotel?

A. Yes.

Q. You have bookings on that convention?

A. Yes, I do.

Q. When were those bookings to come in—reservations?

A. Partially today and the balance tomorrow.

Q. When does the convention start?

A. Tomorrow.

Q. Did you have a capacity house prior to the strike line?

A. I did not.

Q. Did you anticipate a capacity house for the convention?

Mr. Gettler: I object to "Anticipation."

Q. On your records——

The Court: On reservations.

[fol. 84] The Witness: On reservations, I expected a full house.

By Mr. Barkdull:

Q. Since the picket line was placed at your hotel yesterday, have you noticed any loss of revenue or disruption in the normal trade that would be coming through your hotel?

A. Yes, I have.

Q. What type of disruption has there been?

A. I had a telephone call yesterday from a young lady who had paid for three days, and she said she would not cross the picket line, and would I refund her the two days that she had on credit.

Q. Had other cancellations——

A. We had suffered four cancellations, to my knowledge. Not being in the reservation department, where there were more, I have not been made aware of.

Mr. Barkdull: That is all.

Cross examination.

By Mr. Gettler:

Q. Mr. Rosas, what street does your hotel front on?

A. Third, Fourth and the Boulevard.

Q. It fronts on three downtown streets in Miami?

A. That is correct.

Q. And how many entrances does the hotel have on Third Street?

[fol. 85] A. One.

Q. How many entrances are there on the Boulevard?

A. Two.

Q. What other street does it front on?

A. Fourth Street.

Q. How many entrances on Fourth Street?

A. One.

Q. Is there also another entrance that you may have forgotten about, Mr. Rosas, where the help quite often go into work?

A. Service.

Q. The parking lot?

A. Service entrance.

Q. There is a fifth entrance?

A. Service entrance; that is correct.

Q. Now, have you, yesterday or today, observed more than two pickets at any one entrance?

A. No; I have not.

Q. Now, as I understand your testimony, Mr. Rosas, you said you had no contact with Local 255, whatsoever, prior to the strike?

A. That is correct.

Q. To refresh your recollection, on May 13, 1955, were you not contacted by an individual or individuals with regard to Local 255?

[fol. 86] A. I was not.

Q. Did you know on May 13, 1955, that there were negotiations of any type proceeding between the hotel management and Local 255?

A. I did not.

Q. Did you learn on May 13, 1955, or approximately thereabouts, that Local 255 was claiming that there had been a discussion between management and Local 255?

A. I did.

Q. And what did you do when you learned that?

A. I was approached and asked by the employees if I was negotiating, and I denied that I was, and to stop it, I posted a bulletin to the effect that I had not negotiated with any representatives of any organization.

Q. Is this that bulletin, Mr. Rosas?

A. That is it.

Q. Then, you did know, on May 13, 1955, that Local 255

was making certain claims as to the representation of your employees, did you not?

A. That is so.

Q. And how long did you keep that bulletin on your bulletin board?

A. Well, by—the same one that you show there, it was torn off immediately.

Q. Did you learn, after you put that bulletin up, Mr. [fol. 87] Rosas, that as a matter of fact, there had been negotiations going on?

A. The question again?

Q. Did you learn, after you put this bulletin up, as a matter of fact, negotiations had been going on between the stockholders and the owners of the Biscayne Terrace Hotel and Local 255?

A. If you will define negotiations for me, I would say I did learn there had been talk, but not what you would consider negotiations.

Q. But you did learn there had been talk?

A. That I did.

Mr. Gettler: That is all.

Mr. Barkdull: That is all. Come down.

(Witness excused.)

Mr. Barkdull: Mr. Freeman. Your Honor, this testimony will also go to the Biscayne Terrace Hotel.

[fol. 88] Thereupon—WARREN FREEMAN, was called as a witness on behalf of the plaintiff, Biscayne Terrace Hotel, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Barkdull:

Q. Please state your name.

A. Warren Freeman.

Q. Where do you live?

A. North Bay Village, Miami.

Q. Do you have any connection with the Biscayne Terrace Hotel?

A. Yes.

Q. What connection is that?

A. General manager.

Q. Do you have a picket line at that hotel?

A. Yes, sir; we do.

Q. When was that picket line put up?

A. Approximately between 3:00 and 3:15 yesterday afternoon.

Q. Were you present?

A. Yes, sir.

Q. At that time, was there any commotion in your hotel, or disruption of ordinary services rendered by your staff? [fol. 89] A. I was in the lobby and in the premises at the time, and there was considerable confusion and disruption.

Q. Will you tell us what happened?

A. I could not count them, but I would estimate there were between 15 or 18 or 20 organizers inside. I do not know who they were, any of them.

Mr. Gettler: I will object to the tem "Organizers" being used as this man does not know who they were.

The Court: Objection sustained.

By Mr. Barkdull:

Q. Will you tell—those people who came into the hotel, did you subsequently see them on the picket line?

A. I cannot recall whether I saw them. I know they were grabbing or talking to employees, telling them they were on strike, and telling them to get out in the dining room, in the cocktail lounge in the lobby, and throughout the quarters, in the elevators.

Q. Did you observe any of these people yell, who were yelling in the hotel, that the hotel was on strike, and physically assaulting any of your employees?

Mr. Gramling: I object to that, your Honor, to that question. It is not only leading, but he made a speech to the witness.

The Court: Objection sustained.

[fol. 90] By Mr. Barkdull:

Q. Following the setting up of the picket line, did you have occasion to observe any incidents between members of the picket line and your employees as they attempted to come to work?

A. I am not familiar with any cases.

Q. Mr. Freeman, did any of your employees ever advise you that the union, Local 255, represented them?

A. Definitely not.

Q. Did any person, identifying himself as representing Local 255, establish to you that they represented your employees?

A. No, sir; they did not.

Q. Did anybody, on behalf of Local 255, make any demands of you for an improvement of working conditions?

A. No, sir; they did not.

Mr. Barkdull: That is all.

Cross examination.

By Mr. Gettler:

Q. Mr. Freeman, who is Herman Feidelbaum?

A. He is one of the owners.

Q. He is one of the owners of the hotel?

A. Yes, sir.

Mr. Gettler: That is all.

Mr. Barkdull: That is all.

[fol. 91] (Witness excused.)

Mr. Barkdull: We rest, Your Honor, in all three cases.

Mr. Gramling: Just before we recess, if opposing counsel, Marion E. Sibley, will stipulate that, yesterday afternoon, we were before the Hon. Charles A. Carroll, in the DiLido Hotel case until approximately 4:00 o'clock; is that correct?

Mr. Sibley: 4:00 o'clock—let me see. We started at 2:00. I was back in my office before 4:00 o'clock, I believe.

Mr. Gramling: I do not think you could have.

Mr. Sibley: Let me see, now. I know we were there between 2:00—let me see—you finished your argument——

The Court: You are spending so much time on that detail.

Mr. Sibley: I guess he is trying to prove that he did not pull this strike in retaliation of Judge Carroll's order.

Mr. Gramling: Do you want me to testify that it was 4:00 o'clock, or will you stipulate within——

Mr. Sibley: I will stipulate that it was between 3:30 and 4:00. I think I finished my argument at 3:25.

[fol. 92] Mr. Gramling: That is good enough.

Mr. Sibley: We knew pretty well what we were doing before we got there.

The Court: Do you wish a recess?

Mr. Gramling: May we recess?

The Court: We will take a ten-minute recess.

(Thereupon a ten-minute recess was taken, after which the following proceedings were had.)

The Court: Are you ready to proceed?

Mr. Gramling: Your Honor, just to correct the record, were were so busy the past several days, and Mr. Sibley and I stipulated that it was between 3:30 and 4:00 o'clock yesterday, and actually we both agreed that that was the day before yesterday, on Thursday.

Mr. Gettler: Your Honor, in proceeding, we will proceed in order to simplify and keep it clear, in the same order in which the plaintiffs proceeded. At least, in starting our testimony, we will try to do that. This first evidence has to do with the Miami Colonial Hotel, and my first witness will be Mr. Bizzrio.

Thereupon—Don Bizzrio was called as a witness on behalf [fol. 93] of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Your name is Don Bizzrio.

A. Yes.

Q. Spell it for the Reporter, please.

A. B-i-z-z-r-i-o. My name is Dominick but they call me by the name of Don.

Q. Where do you reside?

A. 1956 Southwest 18th Avenue.

Q. Is that in Miami?

A. Yes.

Q. How long have you resided in Dade County?

A. Since 1938, sir.

Q. Are you employed at the Miami Colonial Hotel?

A. Yes, I am.

Q. How long have you been so employed?

A. At the Miami Colonial, I have been employed since 1941, sir.

Q. That is 24 years.

A. 1941.

Q. 14 years; I am sorry.

A. Yes.

Q. In what capacity have you been employed?

[fol. 94] A. I started as bell boy, and to superintendent of service, and bell captain again.

Q. And how long—when were you made bell captain?

A. Well, I was made superintendent of service about nine years ago, sir, but as soon as it quieted down, about six years ago, and it did not—well, none of us made—a little—enough to go around, so we—I cut it down to two bell captains on a watch, and so I was made bell captain about six years ogo. (sic)

Q. And you have been bell captain since approximately 1949?

A. Yes, sir.

Q. Now, at any time within the past several weeks or several months, have you joined Local 255?

A. I joined Local 255 on March 5—March 1, 1954, sir.

Q. That is, you have been a member for something over a year now?

A. Yes, I have.

Q. Did you ever advise Mr. Abe Allenberg, or any other individual in management at the Colonial Hotel, that you were a member of Local 255?

A. I told him I was; yes, sir.

Q. When did you advise Mr. Allenberg of that?

A. Well, sir, we were talking union around there ever [fol. 95] since these strikes began on the Beach.

Q. Which was about the middle of April?

A. Yes.

Q. Have you spoken with Mr. Allenberg of the union?

A. Yes, I have.

Q. And when did those conversations occur?

A. Off and on, sir.

Q. Almost daily?

A. Daily.

Q. Since the middle of April?

A. That is right; yes, sir.

Q. Did you advise Mr. Allenberg——

Mr. Sibley: Do not lead your witness, please, sir. Ask him the questions.

By Mr. Gettler:

Q. Did you advise Mr. Allenberg concerning any complaints of the employees?

A. Oh, yes. I have, for the past two years, sir. In my department, we have a majority—I would say of the help, and all the complaints from my help, in my department, I would take to Mr. Allenberg, or I would have to take it to one of his partners, sir.

Now, we had people that worked under me that had complaints, that I took them to them. We had one such case [fol. 96] as the night bell boy got a hernia and he strained himself at night, and he told the room clerk that he had strained himself, so I did not come on until noon, but when he came, I made—I went to the office, and we wrote out a report on that, and about two days later the doctor called me and he told me the man needed an operation, and I said, well—I said, "The hotel insurance company is going to take care of it." I said, "You can go ahead and follow up with the manager of the hotel." So then the boy came over there about three days later and he said——

Mr. Sibley: I object, Your Honor, to this long-winded story about who said this and that, upon the grounds it is all hearsay, immaterial and irrelevant.

Mr. Gettler: Your Honor, Mr. Allenberg testified that there never, at any time since he took over in October, 1953, were any complaints of any type from employees. This is not hearsay, because we are not putting in to show the truth of the actual complaints. We are showing there were complaints.

The Court: I am interested in conversations, not with all of these other people.

By Mr. Gettler:

Q. Will you give the conversation with Mr. Allenberg?

A. Yes.

[fol. 97] Q. Particularly the conversation in the past six weeks.

A. Yes. Well, shall I finish this here with Mr. Allenberg's partner?

Q. Yes; tell——

Mr. Sibley: Just a minute. When did this occur—two years ago?

The Witness: Yes; that is when we first started complaining.

Mr. Sibley: I mean, two years ago he got a rupture?

The Witness: Yes.

Mr. Sibley: I object to it upon the grounds it is totally immaterial and irrelevant and it has nothing——

Mr. Gettler: We are showing a long history of complaints, contrary to what Mr. Allenberg said that there were none whatsoever. He already started on this, and I suggest we complete this and bring it——

Mr. Sibley: It has nothing to do with Mr. Allenberg at all.

By Mr. Gettler:

Q. Was this with Mr. Allenberg?

A. Yes.

[fol. 98] Q. Will you tell the conversation that you had with Mr. Allenberg, about the complaints?

A. All right, sir. Well, anyway, I told Mr. Allenberg that the doctor said he needed an operation, and Mr. Allen

berg said it was not reported in time; there was not anything we can do about it, so the boy had to leave his job.

Mr. Sibley: Wait a minute. I object to that, upon the grounds it is immaterial and irrelevant.

The Court: Objection sustained.

By Mr. Gettler:

Q. Will you tell the Court about any conversations that you had with Mr. Allenberg in the last six weeks concerning complaints of your own or other employees' complaints that you have reported?

A. Well, there had been all sorts of complaints. I have often asked him who is our boss. We had four or five different owners, and he said—when they are around, they tell us what to do, and then one scrambles after another, and everybody is kept uprooted all day long and all throughout the work. One of the other partners would bawl out a partner—he is supposed to be a partner—in front of 40 or 50 guests like that, in a fight, and then there have been several smaller ones.

Q. Have there been any complaints made about hours? [fol. 99] A. Yes, sir. The night porter told me——

Mr. Sibley: I object to that, upon the grounds it is hearsay.

The Court: Sustained.

By Mr. Gettler:

Q. Did you report to Mr. Allenberg any complaints about your hours?

A. No, sir; not about hours.

Q. Did you have any conversations with Mr. Allenberg in which you complained about wages?

A. Oh, yes; yes, sir.

Q. Did that happen on several occasions?

A. Well, we always—we are always telling them we are never getting enough money.

Q. Did you have any conversations with Mr. Allenberg within the past six weeks concerning Mr. Allenberg's negotiating with Local 255?

A. Yes, I have.

Q. Will you tell the Court about that conversation or these conversations? Incidentally, were there more than one?

A. Yes; there have been.

Q. All right.

A. We kept talking, off and on, and myself and the service department kept telling him why he did not sign, [fol. 100] and he said he could not sign because his partners would not sign, and he would like to sign but they would not sign, and this and that and the other things.

Q. When did the first of such conversations with Mr. Allenberg occur wherein you asked him what you just stated that you asked, when the management is going to sign, and he said that he would not sign—when was the first of such conversations?

A. Well, this first conversation that I had—he introduced me to a teamsters union man, Mr. Detrait, in the coffee shop in the hotel.

Q. When was that?

A. It must have been about five weeks ago. That is when I told him, I said, "Gee, we are all for the *union* and you are their friends—why don't you just sign and let us all get organized?"

Q. What was his reply?

A. He just laughed about it.

Q. Was there a conversation shortly thereafter in the same regard?

A. Well, there was, about ten days or two weeks ago, sir.

Q. What was that?

A. The other bell boy and I were standing beside my desk, and he came downstairs and he said, "Al Berlin of [fol. 101] the hotel union just called me up and wanted to talk with me about organizing the hotel," and I don't want to use his language, but he said, "Why don't you quit bothering me? There is no hotel dissension over here. You people are all there on the Beach." He said, "Stay over there. Do not come over here. You people are all over there on the Beach."

Q. Let us bring this up. You state that conversation was ten days or two weeks ago.

A. Yes.

Q. Since that time, have there been any further conversations with Mr. Allenberg?

A. Well, it was about two or three days ago, sir, he told me he wanted to speak to me in his office, and when I got up in his office, he put a piece of paper in front of me and he told me to sign it.

I asked him what it was, and he said, "Read it." It was a loyalty youth—excuse me—a loyalty oath to the hotel, to my employer, and I said, "I will gladly sign a loyalty oath if you specify in it that if the hotel and all the fellows are going out, everybody in this hotel goes with the union, and I have to go with the union, because I am a member of the union."

And I said, if he put that in, and he said he cannot do it. So I said, "Well, I cannot sign. I showed you my loyalty after you come in here. I stayed with you all of [fol. 102] this time," and I said, "That is loyalty enough, or else I would have left here before."

Q. Did Mr. Allenberg ever request you to talk to the other employees about Local 255?

A. Yes, sir.

Q. When did that occur?

A. Well, that was—I'd say at least two weeks or 15 days ago.

Q. Will you tell us about that conversation?

A. Well, he told me to tell the other people not to pay any attention to them and——

Q. Who do you mean by "them"; not to pay attention; by whom?

A. To Local 255, Hotel Union—to tell me that I am going to take care of them, and I have been taking care of them, and that they are nothing there, and just to get your money, and we have been taking care of you, and I told him, "Well, if you have been taking care of us, we have been taking care of you. You have not been taking care of us very well, due to the fact that you do not show any seniority at the hotel, and you give one person something and you mistreat another person."

Q. How many hours a day do you work, Mr. Bizzrio?

A. I work—we work at the hotel a long and a short day. We work ten hours one day and six hours the next day.
[fol. 103] Q. How many days a week?
A. Six days, sir.
Q. What is your weekly wage?
A. My weekly wage, sir—I am under monthly—$75.00 a month, sir.
Q. Now, Mr. Bizzrio, this afternoon or, rather, this morning, did you have any occasion to meet with a Mr. Gonzalez?
A. Yes, sir. I did.
Q. Who is Mr. Gonzalez?
A. Mr. Gonzalez is president of Local 133, Bartenders Union, sir.
Q. And will you tell us what the purpose of that meeting was?
A. Well, that was—the purpose of that meeting was to go to Mr. Allenberg and ask him if he would let us vote—the employees of the hotel vote on whether we could have a union or not.
Q. Did a group of you go to Mr. Allenberg and ask him?
A. Well, three of us went, sir.
Q. Who are they?
A. Dunbar Norman, one of the bell boys; and Thomas Filcove, the door man.
Q. Is that Dunbar Norman a——
[fol. 104] A. A bell boy.
Q. What is the other man's name?
A. Thomas Filcove.
Q. And is he an employee of the Miami Colonial?
A. Yes; he is a door man.
Q. Did Mr. Gonzalez go with you?
A. Yes, he did.
Q. About what time of day was this?
A. 11:00 o'clock in the morning, sir.
Q. Will you tell us exactly what happened?
A. Well, the four of us went to Mr. Allenberg's office, and Mr. Gonzalez told Mr. Allenberg that he represented Local 255, and that he had three of the employees of the hotel—the chairman of the group that wanted to discuss with him, and take a vote on the hotel.
Q. The chairman of the group was yourself.

A. Myself, Dunbar Norman and Thomas Filcove.

Q. Continue.

A. And we wanted to have a vote whether we could have a union there at the hotel or not.

Q. Then what happened; what did Mr. Allenberg say?

A. Mr. Allenberg said that he had partners, and he had to get in touch with them.

Q. Was that the same thing that he told you over the past six weeks?

[fol. 105] A. He has been telling me about that his partners—about his partners; yes, sir.

Q. Then what occurred?

A. Well, Mr. Gonzalez, Dunbar Norman and Thomas Filcove and myself walked downstairs and Mr.—excuse me—Mr. Gonzalez told them that he would—we would go down and talk it over, and we went down the stairs and we talked it all over, and we went back and we told Mr. Allenberg, "Well, we will give you another hour to contact your partners."

Q. Then what occurred?

A. Well, when we come back, Mr. Gonzalez told me to come up to the office. So we went up there and Mr. Allenberg said he could not contact them—this and that and the other—I do not know the exact words.

Q. Did you leave the office?

A. Yes.

Q. Did the strike commence then?

A. Yes, sir.

Q. After you left this hotel at noon, did you advise the other employees in the hotel that were members of Local 255, that the strike was being called?

A. Well, I do not know. Somehow or other, they all knew it.

Q. Did you participate in a vote with regard to the calling of a strike at the Miami Colonial Hotel?

A. Yes, I did.

[fol. 106] Q. I show you what is called a sample ballot, and ask you if that is an exact facsimile of the type of ballot on which you voted?

A. Yes, it is.

OFFER IN EVIDENCE

Mr. Gettler: I offer this in evidence as Defendants' Exhibit A.

Mr. Sibley: You offer it in evidence?

Mr. Gettler: Yes.

Mr. Sibley: We would like to qualify the witness, Your Honor, before we make an objection, if we may.

The Court: I will let it go into evidence. Bring out whatever you wish on cross examination.

Mr. Sibley: All right, sir.

(The document referred to was thereupon marked Colonial Exhibit A.)

By Mr. Gettler:

Q. When did this balloting, that you just referred to, occur?

A. I do not know the exact date, sir.

Q. Let me refresh your recollection. Was it this past Wednesday?

A. Yes, sir.

Q. And where did you vote?

A. I voted at 2nd Avenue and 8th Street, Northeast, [fol. 107] at the Bartenders Local, upstairs, second floor.

Q. Did other employees of the Colonial Hotel participate in that voting?

A. Yes.

Q. Do you know, of your own knowledge, how many?

A. Well, sir, the ones that I have talked with——

Mr. Sibley: I object to that.

The Court: Sustained.

Mr. Sibley: It is hearsay.

The Court: Sustained.

By Mr. Gettler:

Q. Have you designated Local 255 as your collective bargaining agent?

A. Yes, I have.

Mr. Sibley: Repeat the question, please.

(The pending question and answer were thereupon read by the Reporter as above recorded.)

Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. How did you designate them, Mr. Bizzrio?
A. Well, I joined the union, sir.
Q. You got a union card?
A. Yes; I have it home.
Q. Let me see it.
[fol. 108] A. I have it at home. I have it at home. I believe I may have an old receipt, but I have my union book at home, sir. This is—I think this is an old receipt.
Q. This receipt No. 1079 shows that you paid the union $3.50 a month; is that right?
A. That is when I joined.
Q. $3.50?
A. That is right. That is when they—this is when I paid it, my first month payment was on there. It was on March 1. I have the book at home.
Q. This shows that you joined on January 5, 1953.
A. That is right. That is the first time I made any——
Q. There was not any Local 255, on January 5, 1953.
A. This is the receipt.
Q. Well, the evidence here shows there was not any Local 255 until March, 1954. Now, what were you joining there in 1953?
A. I do not know. You will have to—I was joining the union.
Q. Who gave you that piece of paper to show here today?
A. No one gave it to me.
Q. Do you know whose signature it is?
A. Yes.
[fol. 109] Q. Whose signature is it?
A. Charles Stronker.
Q. Who is he?
A. He, at the time, was an organizer.
Q. Of what union?

A. Local 255.

Q. In 1953?

A. Well, he put down there—but it was not '53. That is what is down there.

Q. That is the only thing you have got to show that you belong to any union at all.

A. No, sir. I have my book at home, sir, with all my paid dues, monthly.

Q. How much do you pay a month?

A. $2.00 a month, sir.

Q. Who gets your money every month; to whom do you give it?

Mr. Gramling: I object to that.

Q. Who do you pay it to?

Mr. Gramling: Objection; argumentative and beyond the scope of direct, and serving no purpose within the issues of the case.

The Court: Objection overruled.

By Mr. Sibley:

Q. Who do you pay your $2.00 a month to?

[fol. 110] A. I paid it to the union hall.

Q. Where?

A. Down in 8th Street.

Q. In Miami?

A. That is right.

Q. Then, you are a member of 133, are you not?

A. No, sir. I am a member of Local 255, sir. I pay to Mr. Berlin.

Q. Whose headquarters is it at 8th Street?

A. They are using that.

Q. That is 133?

A. That is what they use—their building—they use the space there.

Q. Have you ever been a member of Local 133?

A. No, sir; I have not.

Q. Now, you said you voted the other day.

A. Yes, sir; I did.

Q. What day was that?

A. Last Wednesday, sir.

Q. Where did you vote?

A. I voted at Northeast 2nd Street—excuse me—Northeast 2nd Avenue and 8th Street, at the Bartenders union there.

Q. Did you know what you were voting on?

A. Yes, sir.

Q. Did you read this question here?

[fol. 111] A. I read the question; yes, sir.

Q. What was the question?

A. What was the question?

Q. Yes.

A. The question was on whether I authorized Local 255 to represent me, sir.

Q. Is that what you were voting on?

A. Yes.

Q. Well, here is what the question said, and I understood that you said that you were voting on whether to strike. This is what the question says—

A. The strike.

Q. Did you vote to strike, or did you vote to authorize Local 255 to represent you; which?

A. For the strike.

Q. Then, your first statement was inaccurate—you did not vote on the question of whether 255 would represent you?

A. I left that out.

Q. Sir?

A. Sir?

Q. Now, when you went in to vote, it says, there is going to be a secret ballot. How secret was it? What did you do when you went in to the voting booth?

A. What did I do?

Q. Yes.

[fol. 112] A. I first—when I signed a registration to go in.

Q. Now, this was at the labor hall, 133, the local union, up there at their labor hall?

A. Yes.

Q. That was your voting poll.

A. Yes.

Q. You did not see Mr. Allenberg up there, did you?

A. No, sir.

Q. There was nobody there but the labor folks that you knew—Mr. Berlin was there?

A. Yes, sir.

Q. Mr. Al Berlin. Now, was he in charge of the ballot box?

A. No, sir.

Q. Who was in charge of the ballot box?

A. I do not know who the party was.

Q. Did you ever see him before?

A. No; I had not.

Q. When you walked in there, there was a table right as you came in the door there, with a table with two ladies sitting?

A. At the end; yes.

Q. And two ladies sitting there?

A. Yes.

Q. When you walked in, the ladies asked you, "Did [fol. 113] you want a ballot;" is that correct?

A. Yes.

Q. And you walked over and you said, "Yes; I would like to have a ballot."

A. Yes.

Q. Did they ask you for any identification?

A. Yes. I had to register.

Q. You had to sign your name.

A. Yes.

Q. And the hotel you were from.

A. That is right.

Q. And when you signed your name and signed the hotel where you were from, then they would give you a ballot, but not before; is that right?

A. They gave me a ballot when I went in.

Q. They did not make you sign, first.

A. I got the ballot.

Q. The minute you walked in, they handed you that ballot.

A. Yes.

Q. Now, the ballot was just like this one.

A. Yes.

Q. Look at it before you answer, because this came from over there, and you want to be careful about it.

A. Yes; that is the same one.

[fol. 114] Q. Now, after the union ladies sitting at the table handed you the ballot, where did you do your secret voting; did they have a secret booth that you could go in?

A. I stepped off to a side.

Q. You stepped off where Al Berlin could not see you, or you turned your back to him.

A. I stepped over to the side of the table.

Q. Let us say, for the graphic illustration here, for His Honor, so he will know and see how secret this ballot was—we will say these two gentlemen represent the two ladies who handed you the ballot when you walked in; you understand that?

A. Yes.

Q. When they handed you the ballot, then, they did not have any booth where you could hide and make it secret; you turned your back to them like this and marked it on the table.

A. That is what I did.

Mr. Gettler: I object to what Mr. Sibley has introduced there, that there was no booth there. This witness stated——

Mr. Sibley: There was not any he could find.

Mr. Gettler: He stated he did not go in one. He did not state there was none. You are testifying, Mr. Sibley.

[fol. 115] Mr. Sibley: Fine.

By Mr. Sibley:

Q. Did you see any booth there?

A. I did not look.

Q. All right. So far as you know, there was not any booth there, is that right; so far as you know?

A. I do not know.

Q. So you turned your back on the young ladies at the table and filled out your ballot?

A. That is right.

Q. And then you folded it and then what did you do?

A. After I folded it, I put it in a sealed carton placed on the table.

Q. You did not sign it, did you?

A. Sir?

Q. You did not sign your name to it?

A. No, sir; I did not.

Q. What did you sign on this ballot?

A. What did I sign on it?

Q. Yes.

A. I signed what it said to sign.

Q. What did it say to sign?

A. Right here.

Q. What was that?

A. It says to sign. You put the hotel name and you [fol. 116] put down, "Yes" or "No."

Q. You put the hotel name. When you went out for your secret ballot, what hotel did you write there?

A. What hotel would I write?

Q. That is what I am wondering.

A. Where I work.

Q. And where——

A. What do——

Q. I do not know.

A. What do you think I would write?

Q. When you wrote the hotel there, on your secret ballot, did anybody say to you, "Bring that ballot back here and let's see what hotel you wrote on it?"

A. I cannot recall.

Q. You cannot recall whether they checked your ballot before you put it in the ballot box?

A. I cannot recall.

Q. Did Al Berlin demand to see your ballot before you put it in the ballot box?

A. No one demanded to see it.

Q. Did anybody see it?

A. Not to my knowledge.

Q. Then, let us be fair with His Honor here.

A. Yes.

Q. You signed the name of a hotel up here?

[fol. 117] A. I signed the name of the hotel where I worked.

Q. Nobody checked what hotel name you put in there, did they?

A. No.

Q. You folded the ballot and dropped it in a ballot box?

A. Yes.

Q. And the only thing that you had to do—you did not have to get the ballot, did you?

A. I registered for it.

Q. I thought you said they gave you your ballot, first?

A. They gave me the ballot, and you register, and you go to—and put your ballot in.

Q. Did you know what this question meant that was asked on this ballot, that you voted on?

I will read it to you:

> "Do you authorize a strike in your hotel for the purpose of gaining recognition of hotel employees union Local 255, AF of L as your collective bargaining agent so that it can negotiate on your behalf for higher wages, lower hours, welfare benefits and such other improvements in your working conditions as you authorize?"

A. Yes.

[fol. 118] Q. What does that mean?

A. It means that I would have finally got some help that I was trying to get for the last 20—since 1938, since I have been down here, sir, and it would have meant that I would have had a job, and I would have got a decent wage and everything, and working conditions would have been improved.

Q. Who told you that they were going to give you the help?

A. I read in between the lines. That is the way it reads to me.

Q. You read between the lines. Let us get on with your wages. You are a bell captain?

A. Yes.

Q. You receive tips?

A. Yes, sir.

Q. Your primary income comes from tips; that is correct, is it not?

A. Yes, sir.
Q. You get a lot more in tips than you do in pay?
A. Well, sir—I would not say that daily.
Q. Well, do you make an income tax return?
A. Yes; I do.

Mr. Sibley: I withdraw the question as to the amount you get, then. That is all.
Mr. Gettler: That is all.

(Witness excused.)

[fol. 119] Thereupon—SAM GYSON, was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Please state your name and address.
A. Sam Gyson, professionally; legally, Samuel Gyson, 2501 Southwest 21st Street, City of Miami.
Q. What is your occupation, Mr. Gyson?
A. I am a radio broadcaster over WAHR. I am a columnist with the Miami Beach Weekly known as Panorama.
Q. As a radio broadcaster, do you have a number of sponsors?
A. I do, sir.
Q. Approximately how many?
A. Commercial sponsors, at this time, would be about ten or twelve; but since there is a political campaign, there are some who may regard—some politicians who have spot announcements as sponsors. I do not accept them as such.
Q. Now, calling your attention to Tuesday night, May 24th, did you have any occasion to be at the headquarters of Local Union Number 255, at 920 Alton Road, Miami Beach?
A. Yes.
[fol. 120] Q. What was at that location?

A. I had been invited to be a guest speaker. I understood that there was a union meeting formal or informal, at the chow quarters for the striking hotel employees, and I agreed to be a guest speaker, just as I have agreed to be a guest speaker at various religious, fraternal and social organizations.

Q. And you did appear, on May 24, 1955, and you were a guest speaker; is that correct?

A. That is right.

Q. And at that time was any request made of you, in regard to supervising or observing an election to be held on Wednesday, May 25?

A. It was, sir.

Q. Who made that request, and what was your response?

A. The request was made by David Herman, the special organizer for Local 255, and when Mr. Herman had made clear the fact, or to my satisfaction that the union wanted to hold this special strike authorization election, had invited the cooperation of the hotel owners, the city council and the presidents' council.

Mr. Sibley: Wait a minute, Mr. Gyson. Are you referring to something that Mr. Herman told you?

A. I am responding to the question from counsel.

[fol. 121] Mr. Sibley: Answer my question. Are you referring to information that you say that you received? Was that something Mr. Herman told you?

The Witness: Something——

Mr. Gettler: Is that——

Mr. Sibley: I have a right to ask him that.

Mr. Gettler: Is that an objection?

The Court: Both of you gentleman (sic) please keep quiet, and address your remarks to the Court. Let us have no further exchange of conversation between counsel. If you object, state your objection to the Court.

Mr. Sibley: I object, your Honor, upon the ground that the witness' testimony, necessarily, is hearsay, and depends upon information received from others.

The Court: Objection sustained.

By Mr. Gettler:

Q. Was there a request made of you, as you stated previously, by Mr. Herman?

A. Yes.

Q. What was your response to that request?

A. My response, on the basis of the request was since no one else invited would serve to supervise, I would be happy to.

[fol. 122] Q. Now, on the following morning, then, did you assume certain supervisory duties over this election?

The Witness: Judge Giblin, the word "supervisory"——

The Court: Answer the question.

Mr. Gettler: Answer the question as best you can.

The Witness: Yes.

By Mr. Gettler:

Q. What did that entail, Mr. Gyson?

A. It meant seeing that the election would be conducted——

Mr. Sibley: I object to that, upon the ground that it calls for a conclusion of the witness. He testified what he did.

The Court: Objection sustained.

By Mr. Gettler:

Q. What did you do, Mr. Gyson?

A. There were three places in which this strike vote authorizations were to be conducted: one at 920 Alton Road, where I had been the speaker the previous evening; and the other was union headquarters on Washington Avenue; and a third at union headquarters in the City of Miami.

I arrived at the voting place at 920 Alton Road a little before 8:00 o'clock. The voting had already been in progress. I checked the procedure.

[fol. 123] As those who wanted to vote came in, they were asked by registrars or clerks to show their identification. Accepted for identification was a union membership card or a police card, as it was explained to me, for

the purpose of permitting a vote of those who would not——

Mr. Sibley: I move to strike that part of the testimony involving hearsay testimony.

The Court: Objection sustained.

By Mr. Gettler:

Q. Were you—only set forth, Mr. Gyson, what you, yourself, observed.

A. All right, sir. There were registrars who, as each prospective voter came in, asked to see identification. The identification they regarded as suitable were union membership cards or police employment cards. When the identification was given to the registrar, the individual signed his name and place of employment. The individual was then given a ballot——

Q. Just a moment. Where did he sign his name and place of employment?

A. There were registration sheets.

Q. Continue, then.

A. He then took his ballot and had his choice of one of several ballot booths, and in the ballot booth he marked his ballot, "Yes," or "No", and folded it and came out [fol. 124] to a ballot box and deposited the ballot in the ballot box.

Q. Were the ballots folded before being deposited?

A. Those that I witnessed had been folded; yes.

Q. Will you describe the ballot box?

A. Well, in lieu of the arithmetic—I would say about 18 inches or 20 inches, and possibly eight or ten inches deep, and possibly 12 to 15 inches across.

Q. Was this box sealed in any manner?

A. They were corrugated boxes, sealed on all corners, with just a slot to receive a folded ballot. There was a custodian at the ballot box.

Q. Was this box kept in plain view of all the persons in the voting place?

A. Yes, sir.

Q. Did you note whether or not the name of the particular hotel, at which each individual was employed, was inserted on the ballots?

A. On the marked ballots, certainly not, because that was not available to me or anyone else. The ballot, on presentation to the individual, on registration, was marked with a hotel which he had registered.

Q. Who marked the name of the particular hotel on each ballot, as it was handed to the voter?

A. To the best of my memory, it was the registrar.

[fol. 125] Q. Did you observe whether or not anyone was denied the right to vote on the basis of lack of membership in the union?

A. No, sir.

Q. Well, did you observe whether there was any such?

A. There were individuals who were presenting police cards as identification, instead of membership cards, and I accepted the possibility that these were non-members of the union.

Q. Did you go to each of the voting places during the day?

A. I did, sir.

Q. Did you have specific individuals working under you to aid you in your duties?

A. There were, I believe, four members of the union who were to be responsible to my challengers.

Q. And who were those four individuals?

A. There are names that I knew only as a consequence of being associated with the election. I believe I can remember some. I made an affidavit covering all of this. If you refresh my memory—if that is in order, I would appreciate it.

Q. Was one of the four individuals Mr. Al Gonzalez?

A. Yes.

[fol. 126] Q. Was one of the individuals Mr. Sidney Sommer?

A. Yes.

Q. Was one of the individuals Mrs. Ruth Saben?

A. Yes.

Q. Was the fourth individual Mr. Jack Culerton?

A. Yes.

Q. At the close of the balloting, on the evening of Wednesday, May 25th, where were you, Mr. Gyson?

A. I was at the chow hall at 920 Alton Road, where the striking members of the hotel employees union meet.

Q. Were there sealed ballot boxes there?

A. There were. There were the sealed ballot boxes of that office, and later there were delivered sealed ballot boxes from union headquarters, on Washington Avenue, and the other voting place in the City of Miami.

Q. Now, you described the ballot boxes. You stated they were sealed on four sides, and there was an opening at the top. When the boxes were at Alton Road, was there anything at the top; was there still a slit?

A. You mean, when they were sealed and final delivery?

Q. Yes.

A. The slits had been sealed.

Q. When the boxes were brought in, were there a great number of persons assembled at 920 Alton Road?

[fol. 127] A. I thought there were about 200.

Q. And did you make any statements to the assembled group?

A. I did, sir.

Q. Did you request information as to whether anyone had been denied the right to vote?

A. I did.

Q. Did you request information whether anyone challenged the procedure?

A. I did, sir.

Q. What was the response to each of those questions?

A. No one offered a challenge in response to either question.

Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. Mr. Gyson, one of your sponsors of your radio program is Local Union No. 255; is that correct?

A. That is right.

Q. They pay a certain amount of money to you each week to aid in defraying the expenses and making a profit on your program; is that correct?

A. That is not right.

Q. Who do they pay, and how much do they pay for your services to them at night?

[fol. 128] A. The union pays $60.00 a week, the regular sponsor's fee to the radio station for which I broadcast.

Q. Does the amount you receive from the radio station have any bearing on the number of sponsors that you have?

A. It does, sir.

Q. The more sponsors you get, the more pay you get.

A. That is right.

Q. And so, actually, out of what the union was paying you each week, you were getting something?

A. That is right.

Q. Then, you were indirectly being paid each week, prior to your appointment as their—I do not know—election director—you were receiving each week from them a certain amount of money; is that correct?

A. Under the terms described; yes.

Q. Now, had you known Mr. Herman prior to us coming here to Miami Beach?

A. No, sir.

Q. And you had not been affiliated with him in any organization?

A. Not to the best of my knowledge, sir.

Q. Well, are you from New York?

A. I am, sir.

Q. Have you had any contacts with him in any political [fol. 129] meetings or anything of that character in New York?

A. No, sir.

Q. You had never belonged to any organizations—political organizations—that he belonged to, as far as you know?

A. As far as I know, sir.

Q. You do not recall attending any caucus or any meetings with him of any character?

A. No, sir.

Q. You are sure about that?

A. To the best of my knowledge, sir,—and I am aware of the fact that I am under oath.

Q. I would suggest——

A. I wanted to be sure you did know it, sir.

Q. Now, Mr. Gyson, you were requested, by your indirect employer, to become their director of elections; is that correct, or something of that nature—their security officer of elections; is that correct?

A. Would you try that again, sir—the phraseology.

Q. Well, you——

A. Through me——

Q. You were nominated or appointed or requested by your indirect employer, that is, Local 255, to supervise their elections; is that correct?

Mr. Gramling: I object to that. The question is argu- [fol. 130] mentative and unduly lengthy—putting in these indirect employers. He can ask him directly.

Mr. Sibley: I will ask him, then, to save time.

By Mr. Sibley:

Q. You were requested by Mr. Herman, of Local 255, to be their supervisor of elections; is that correct?

A. In the presence of 500 persons; yes, sir.

Q. In the presence of 500 persons at the union hall.

A. At 920 Alton Road—the union hall; that is right, sir.

Q. And you accepted it in the presence of 500 persons?

A. I did, sir.

Q. You did not know this was going to be tendered to you by Mr. Herman before you arrived at the union hall, did you?

A. No; I did not know that it would be offered to me, but it did not come to me as a great surprise.

Q. You had some little feeling about that it would probably be thrust upon you?

A. I am a news commentator and I know the facts of life in my community.

Q. Let us get down to the facts of life about this election. [fol. 131] How much time did you spend at the offices of Local 255, which is one of their polling places, on the day of the election?

A. Roughly, about an hour or an hour and a half.

Q. Was that in broken doses or one visit?

A. One visit.

Q. What time of day was that?

A. I will need the opportunity to rationalize it, however.

Q. I want approximations.

A. I would say, approximately between 10:00 or 10:30 and 12:00 or 12:30.

Q. The polls opened at 8:00 o'clock in the morning.

A. I do not know. I got there about 8:00 o'clock.

Q. About 8:00 o'clock?

A. Yes.

Q. And you stayed there until when?

A. I stayed at my first stop, 920 Alton Road.

Q. I mean, the polls open at the office of 255, their first polling place, about 8:00 o'clock in the morning, did it not?

A. Sir, I do not know this as a point of fact, and you want a factual answer.

Q. It was supposed to, according to your direction, to be open at 8:00 o'clock in the morning.

[fol. 132] A. It was expected. It was described to me that there would be some arriving to vote about 7:00.

Q. Do you know what occurred, from the time the balloting started at the offices, on Washington Avenue, of Local 255, until the time that you arrived there around 10:30 or 11:00 o'clock?

A. I know, sir, only on the basis of hearsay.

Q. Only what somebody told you?

A. That is right, sir.

Q. Now, from 12:00 or 12:30 on that day, until 10:00 o'clock that night when that poll was supposed to close, do you know what occurred there except on the basis of what somebody told you?

A. No, sir.

Q. Now, let us take the polling place—I believe you call it the chow hall.

A. That is the place at 920 Alton Road, sir.

Q. How long did you spend at the chow hall?

A. A little more than two hours in the morning. That was my first stop.

Q. Did you spend any time during the afternoon there?

A. I got back there—this is not to anticipate what you are saying—but I want to get it right. I know you are interested in that. I got to 920 Alton Road about 8:00, and I [fol. 133] stayed there until about 10:00 or 10:30. Then

I went to the Washington Avenue place and spent about an hour and a half there, and from there I went over to the Miami place and I spent about an hour there.

From the Miami place, I was "dragged" so I went home for a shower and to change my clothes, and I then returned to Alton Road about 6:00 o'clock, and then I made another stop at the union office at Washington Avenue.

Q. Now, let us take the polling place in town. That was at the headquarters of Local 133; is that correct?

A. I believe so, sir.

Q. You did not spend but one hour there during the entire voting time?

A. That is right.

Q. The voting time approximately was from 8:00 o'clock in the morning until 10:00 o'clock in the evening—14 hours?

A. That is right.

Q. Now, you do not know what happened or what procedures were followed at that polling place, from your own knowledge, except during the hours that you were present?

A. That is right.

Q. Any other information you must rely upon that given you by others?

A. May I volunteer something, Mr. Sibley?

[fol. 134] Q. Yes.

A. You will find an affidavit that I signed in which I make the point, that while the term "supervisor" was used, it was quite apparent that one individual, no matter what his talents, interests or disinterestedness, could not be in three places at once for all those hours. And so the affidavit that I made was made on the basis of a challenging observer who did his best and in the belief that the procedures that he had witnessed had been maintained in all the areas—with affidavits from all of those involved, then signed his own affidavit.

Q. I understand that. Now, you said that you had four people designated to help you; is that right?

A. Yes.

Q. At your supervision?

A. The term is not—that is not correct——

Q. Give help.

A. These are four persons who had the status of captain in conducting the election.

Q. Fine. There were four people who were captains conducting this election?

A. Yes.

Q. One was Gonzalez, who is head of one local, No. 133; is that correct?

A. I believe so, sir.

[fol. 135] Q. Who were the other three captains?

A. They were the three names mentioned.

Q. You do not know them personally?

A. I do not.

Q. You never had any contact with them except for the short period of time involved in this election.

A. That is not quite true, sir. I have unquestionably seen one or two of them before, but never on any intimate basis; never.

Q. Never on any basis where you could tell me their names now?

A. That would be right.

Q. Even though they were read to you 15 minutes ago or 20 minutes ago?

A. I heard some of them. I was not sure of the others.

Q. Now, are they the four people that gave you the affidavit in reference to operating the polls regularly and according to your procedures?

A. Well, may I explain it to you, sir?

Q. Answer, first, whether they gave you an affidavit or not, and then explain it, if you wish.

A. May I answer, "Yes," and offer an explanation?

Q. Thank you, sir. Go ahead.

A. At the time——

Q. Did you answer, "Yes"?

[fol. 136] A. I did answer, "Yes."

Q. Go ahead.

A. At the time these ballot boxes were open in full view of some 200 persons assembled at the union hall, I got each one of these individuals by name and I said, "I am signing my affidavit on the basis of what I saw. I will not presume to make an affidavit on what I did not see and did not do. I am satisfied this was an honestly conducted election. But I insist that I get from you affidavits stating that the procedures which I witnessed were uniformly carried out in my absence."

Q. Now, if a man produced a union card, he was permitted to vote; is that right?

A. If he produced a union card and indicated that he worked for a hotel, he was permitted to vote.

Q. The union card does not indicate the place of employment.

A. Not of necessity, sir.

Q. He would produce a union card and state, "I am employed at such and such a hotel."

A. Yes.

Q. And the union card gave him the right to vote?

A. Yes.

Q. And his statement was accepted at face value?

A. Yes.

[fol. 137] Q. Even if he was not employed anywhere, if he came in and showed his union card and said, "I am employed at the McAllister," why, he was given a ballot and permitted to vote; is that correct?

A. I do not know if it is a question or a statement, Mr. Sibley.

Q. Would he have been given a ballot under those circumstances?

A. Under the circumstances, it seemed reasonable.

Mr. Sibley: That is all.

Mr. Gettler: That is all.

(Witness excused.)

Mr. Gettler: Mr. Gonzalez.

Thereupon—ALVARO GONZALEZ was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Please state your name and address.

A. Alvaro Gonzalez.

Q. What is your address?

A. 5105 Southwest 7th Street.

[fol. 138] Q. What is your occupation, Mr. Gonzalez?

A. I am president of Local 133.

Q. How long have you had that position?

A. It will be two years this coming July.

Q. Local No. 133 is affiliated, is it not, with the Hotel Restaurant Employees and Bartenders International Union, A. F. of L.?

A. Yes.

Q. As a sister union of Local 255?

A. Yes.

Q. Now, this morning, did you——

The Court: Is there a difference between these two unions? Why is there two instead of one?

The Witness: We have different jurisdictions, Your Honor.

The Court: What is the jurisdiction of Local 255?

The Witness: The jurisdiction of Local 255 is Hotel Workers.

The Court: And 133?

The Witness: 133 has jurisdiction of restaurants, night clubs and cafeterias.

By Mr. Gettler:

Q. Do the two local unions work together?

A. We do, sir. We cooperate with each other.

[fol. 139] Q. And as a matter of fact, you have been spending a good deal of your time working with Local 255, have you not?

A. Full time, lately.

Q. Now, have you had occasion to speak with a Mr. Abe Allenberg of the Miami Colonial?

A. Yes, sir.

Q. When did that occur?

A. About five minutes to 11:00.

Q. On today's date?

A. Yes.

Q. Will you tell us the circumstances of that?

A. The employees of the Miami Colonial had been at a meeting the night before, and asked that we contact management——

Mr. Sibley: I object to that, upon the ground it is hearsay testimony.

Mr. Gettler: It is background to show what the meeting was——

The Court: Objection sustained.

By Mr. Gettler:

Q. Why were you at the Miami Colonial this morning?

A. I went to ask Mr. Allenberg if he would consent to an election being held of his employees, and if the election proved that we represented, Local 255 represented the majority of the employees, as the bargaining agent for [fol. 140] the employees, to sit down and negotiate.

Q. Who accompanied you, Mr. Gonzalez?

A. A committee of three workers. It seemed the election did not mean anything to them. We wanted to have another one to prove that we did represent the workers. The election had been held.

Q. You stated that the election did not mean anything to them. Whom did you mean?

A. The employers.

Q. And you——

A. About the election. It was published in the papers. Leaflets were passed out—about 20,000 leaflets were passed of the election to be held.

The Court: Was there any certificate of election of the results, or any letter of the results communicated to management of any one of these three hotels?

Mr. Gramling: I did not hear you.

The Court: I asked if any certification by Mr. Gyson, or anyone else, had been sent to any of these three hotels, as to the results of the election?

The Witness: To my knowledge, sir; I have not.

By Mr. Gettler:

Q. Did you advise Mr. Allenberg that the election conducted by the union had showa that the vast majority of the employees were in favor of the union?

[fol. 141] A. He did not give me time. He said he had to contact his partners. So the committee asked me to come

outside for a minute, and when we went outside, the committee said, he can contact his partners. He wanted time until Monday morning, and the committee informed me, that on other matters that he contacted the partners immediately, and that he could, and that they felt that they wanted an answer immediately, because the fear of them being discharged or that he was stalling, and they wanted him to give an answer right away.

I went back and informed Mr. Allenberg of the request of the committee. I told Mr. Allenberg that we would give him an hour to contact his partners, and we would come back for an answer. He said he would.

I left, and I returned at 12:00 o'clock, and I asked Mr. Allenberg if he contacted his partners, and he said, "No, I did not."

We walked outside and informed the workers that they—that Mr. Allenberg had told us he had not contacted or tried to contact the partners, so they decided to walk out then. Just one—before that, there was one thing.

When we went outside and I called Local 133 headquarters for picket signs, and they informed me, and the picket signs arrived a little after 12:00, and a line was put on.

[fol. 142] Q. Do I understand your testimony that Mr. Allenberg told you, at 12:00 o'clock, that he had not tried to contact his partners?

A. He told me he could not. He said, "I could not contact"—first, he told me he would, and then he said he could not contact them.

Q. That was at 11:00, he told you he would.

A. That is right.

Q. And at 12:00 he told you that he could not do it.

A. That is right.

Q. Mr. Gonzalez, you worked under the direction of Mr. Gyson, did you not, in the conduct of the election on Wednesday, May 25th?

A. I did, sir. I was in charge of the headquarters of Local 133, election director.

Q. And what were your duties?

Mr. Sibley: I object to this, upon the ground it is immaterial and irrelevant to inquire here——

The Court: Objection overruled.

A. My duties were to see that only hotel workers were entitled to—were entitled to vote, and see that the election was orderly and to supervise the meeting hall, I mean, the election as a whole.

Q. And will you describe how the election was conducted? [fol. 143] A. We had, in Local 133 headquarters, we had 11 people working. We had four tables set up for the different hotels in Miami. One hotel was set up for Miami Beach hotels—those workers that lived in town that wanted to vote in Miami, and we had two girls sitting there registering the voters as they came in, and they were asked to sign a register sheet with their name and the hotel where they worked.

Then, after questioning, if the girls on the table felt that the person was a hotel worker by identification, such as a police card, union book pay stubs—if they had any pay stubs, I mean, pay checks or pay envelopes, they were asked that, also, and then they were issued a ballot. At times, when there was a rush, they put the name of the hotel, themselves, on the ballot; other times the girls would fill the hotel on from the register slip or sheet of paper that they had. They worked it both ways.

And then the person would take the ballot, and we had marked in our headquarters—we have an executive board room that is partitioned off with a door, and the officers of the business agents, where they go into these offices and close the door and mark their ballots, and come outside and fold it—fold the ballot and put it in a box.

We had a person watching the box there at all times until the polling was over.

[fol. 144] Q. The office in which they would go to mark their ballots, was anybody present with them in there?

A. No.

Q. Is there anything further in regard to the conduct of the election?

A. Well, after—at 10:00 o'clock at night, after we closed, we sealed the ballot boxes—the slit that was made to deposit the ballots in, they were sealed and signed by each member of the committee on the card. We stated the time that the

box was opened, the time that the box was sealed and signed by the members of the committee.

Q. Now, did you participate in the counting of the ballots?

A. As a watcher.

Q. Do you know the results of the counting as far as the Miami Colonial is concerned?

Mr. Sibley: I object to that upon the grounds it is immaterial and irrelevant. It is not the best evidence of any results.

Mr. Gettler: Mr. Sibley raised the question.

The Court: On the last ground; sustained.

Mr. Gettler: I am sorry.

The Court: Sustained on the last ground. The best evidence is not his statement.

Mr. Gettler: We have the ballots here. I was going to [fol. 145] ask him to identify them.

By Mr. Gettler:

Q. Mr. Gonzalez, are these the ballots that were cast by the Miami Colonial employees?

The Court: By those who identified themselves as Colonial employees.

Mr. Gettler: I accept that correction.

The Witness: Yes.

Offer in Evidence

Mr. Gettler: I would like to offer these in evidence as Defendants——

Mr. Sibley: May I see them, please? We object to them, upon the grounds that the authenticity of the voter has not been established.

The Court: Overruled. They will be received in evidence.

Mr. Gettler: There are 28 separate pieces of paper headed, "Official Ballot."

(The documents referred to were thereupon marked Colonial Exhibit B.)

By Mr. Gettler:

Q. Mr. Gonzalez, were you an official of Local 133 when Local 255 was first chartered?

A. Yes, sir.

Q. When was Local 255 first chartered?

A. The exact date, I could not tell you.

[fol. 146] Q. Can you tell us the month and the year?

A. I believe it was in March of 1954, I am not sure.

Q. Now, prior to the chartering of Local 255, was there a group or an organization known as Local 255 organizing committee?

A. There was the group known as the organizing committee, and at that time there was no charter issued and no number. It was later—this group, organizing committee, was later known as Local 255.

Q. Was this organizing committee more fully called the Hotel Employees Organizing Committee?

A. Yes.

Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. Mr. Gonzalez, do I understand you to say that Local 133 has given up all the members—its members who are waiters in the several hotels, on Miami Beach, which hold cards in No. 133?

A. They are still paying dues to Local 133, but they are —their jurisdiction of those members has been designated to Local 255.

Q. Do you turn over to Local 255 the fees that all the waiters, on Miami Beach, who work in hotels, who are mem-[fol. 147] bers of Local 133, pay into your headquarters?

A. No.

Q. They are still members of your union?

A. They are members of my union; yes.

Q. And your union is still, by its laws and charters, their bargaining agents, is it not?

A. Well, not exactly. They have signed pledge cards in Local 255 designating Local 255 as their bargaining agent.

Q. The members of your union have done that, contrary —that is contrary to your constitution and by laws?

A. No.

Q. You are sure.

A. That is right.

Q. The members in the Miami hotels are also members of 133, are they not?

A. The what?

Q. The waiters in the Miami hotels, generally are members of Local 133, are they not?

A. I'd say the majority of them are members of Local 133.

Q. This is not true, Mr. Gonzalez, over the years—for the last ten years—the hotels on Miami Beach and hotels in Miami, when they wanted waiters, called your union for waiters, did they not, generally?

[fol. 148] A. Not in the last ten years.

Q. Well, the last five years.

A. No. I'd say in the last three or four years.

Q. Fine. You have not had any trouble with those hotels, and you are furnishing them waiters for three or four years, have you not?

A. Oh, we have had trouble.

Q. Well, you have continued to supply waiters, have you not?

A. To those hotels that we did not have trouble with.

Q. Did you supply waiters for the Miami Colonial?

A. I never recall them calling us for waiters.

Q. Did you supply waiters for the Biscayne Terrace?

A. They never did call me.

Q. Did you supply waiters for the McAllister?

A. They never did call me.

Q. So, you did not supply waiters for these three hotels here tonight?

A. No.

Mr. Sibley: That is all.

Mr. Gettler: That is all.

(Witness excused.)

[fol. 149] Thereupon—DUNBAR NORMAN was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Please state your name.
A. Dunbar Norman.
Q. What is your employment?
A. Miami Colonial Hotel.
Q. How long have you been so employed?
A. Ten years.
Q. In what capacity?
A. Bell man.
Q. What were your daily hours, Mr. Norman?
A. I worked a long day and a short day—six hours one day and ten another.
Q. What were your wages?
A. Thirty cents an hour.
Q. Prior to that date, did you make any complaints to any supervisor of yours whatsoever concerning any of your conditions of employment?
A. I have asked my bell captain for a raise.
Q. What happened with that?
[fol. 150] A. He said he could not do anything about it.
Q. Did you ever get any vacation?
A. Yes.
Q. What length of time?
A. Well, I usually take around three weeks
Q. Paid vacation?
A. I get a week's pay.
Q. One week's pay?
A. Two week's (sic) no pay.
Q. Did you have occasion to attend a meeting last night, that would be May 27th of the employees of the Colonial Hotel?
A. A meeting?
Q. Yes.
A. Yes.
Q. And——

A. I do not know what the date was. It was one morning.

Q. What was the purpose of that meeting?

A. To get us not to—to try to get us not to go out on strike.

Q. Who called that meeting?

A. Mr. Allenberg.

Q. He called the employees together.

A. Yes.

Q. What did he tell you?

[fol. 151] A. He said he wished we would not go out on strike; that he treated us nice, and there is no reason why we should not be good friends.

Q. Will you try to place the date and time of this meeting, Mr. Norman?

A. I think it was the day before yesterday—around 11:00 o'clock or Monday of this week around 11:00 o'clock.

Q. And who was present at that meeting?

A. The bell man and the bus boy, and the waitress and elevator girls.

Q. How did this meeting occur; were you ordered to attend?

A. Mr. Allenberg asked us up there; yes.

Q. Did he state anything about Local 255?

A. Well, he did not say anything about—he said something about the union. He did not mention Local 255.

Q. What did he say about the union?

A. He said, "There is no use of joining a union." There is no use of walking out on him, because he treated us nice.

Q. He was trying to discourage you from participating in the strike?

A. Yes.

Q. Mr. Allenberg indicated to you, to all of you that were assembled, that he knew there was a strike.

[fol. 152] Mr. Sibley: I object to the question upon the grounds he is leading the witness.

The Court: Objection sustained.

By Mr. Gettler:

Q. Since that meeting with Mr. Allenberg, which occurred, you state, several days ago——

A. One day this week.

Q. Since that meeting with Mr. Allenberg, was there any other meeting with him in which you participated?

A. Not that I can remember.

Q. Did you participate in any discussion this morning with Mr. Allenberg?

A. Yes. He asked if we had gone out yet, and I said, "No, we are still hearing something to that effect."

Q. What time did that occur?

A. Around 10:30 or a quarter to 11:00.

Q. 10:30 or a quarter to 11:00 this morning?

A. Yes.

Q. Were you one of a group of three?

A. Yes.

Q. Who were with Mr. Gonzalez to see Mr. Allenberg?

A. Yes.

Q. Will you tell us what occurred at that meeting?

A. Well, Mr. Gonzalez talks so low, and I am hard of hearing—I lost my hearing in the war—and I was standing [fol. 153] pretty far away from where they were talking, and I could not understand very much what they said. I was standing quite a distance from Mr. Gonzalez, and he was talking low, and I could not understand the words. I know Mr. Gonzalez said that he represented Local 255. I did hear that.

Q. After Mr. Gonzalez spoke with Mr. Allenberg, did he come back where you were standing and confer with you and the other two?

A. I think that was after. I said it was 10:30. I think it was after he conferred with Mr. Gonzalez and asked if we had gone out yet, and I am sure it was, now.

Q. Mr. Norman, did you participate in an election on Wednesday, May 25th?

A. Yes.

Q. Where did you vote?

A. I voted at 8th Street.

Q. In Miami?

A. Yes.

Q. And did you, as an employee of the Colonial Hotel, vote to strike?

A. Yes.

Mr. Gettler: That is all.
Mr. Sibley: No questions. Come down.

(Witness excused.)

[fol. 154] Mr. Gettler: Mr. Filcove.

Thereupon—THOMAS FILCOVE was called as a witness on behalf of the defendants and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Please state your name and address.
A. Thomas Filcove, 1956 Southwest 18th Avenue.
Q. Where are you employed?
A. Miami Colonial Hotel.
Q. In what capacity?
A. Door man.
Q. For how many years?
A. Not years; about six weeks.
Q. Are you a member of Local 255?
A. Yes, I am.
Q. Did you participate in an election held on Wednesday, May 25th?
A. Yes, I did.
Q. Did you vote to strike?
A. Yes, I did.
Q. Did you participate in any meeting with Mr. Allenberg?
A. Only this morning. I mean, at 11:00 that the others were there.
[fol. 155] Q. Will you tell the Court about that meeting?
A. Well, Mr. Gonzalez said he represented the union and would like to sit down and negotiate or have a vote with the employees, and with management, to decide whether we should have a union in the hotel.
Q. Now, you heard Mr. Gonzalez' testimony with regard to that, the reply of Mr. Allenberg, and with regard to what occurred?

A. Yes.
Q. After this?
A. Yes.
Q. You were in the Courtroom and you heard that?
A. Yes.
Q. Were those statements correct?
A. Yes, sir.
Q. Now, did you participate several days ago in any meeting at which Mr. Allenberg requested the employees to come together?
A. No; no, I did not.
Q. What are your hours of work as a door man?
A. A short and long day; ten and six.
Q. Your earnings—or wages?
A. Approximately $60.00 every two weeks.
Q. Excuse me.
A. $60.00 every two weeks.

[fol. 156] Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. Where did you work before you went to the Miami Colonial?
A. New York City.
Q. How long have you been down here?
A. About two months.
Q. When did you become a member of Local 255?
A. When I signed my card. I think it was three or four days ago, if I am correct.

Mr. Sibley: That is all.
Mr. Gettler: That is all.

(Witness excused.)

Mr. Gramling: If Your Honor please, to facilitate the proceedings here, we now propose to call the various employees of the Miami Colonial as quickly as is possible, and have them step up and swear to the fact that they did participate in an election, and did vote for the strike.

For that reason, I would like, if I may, to ask all of the employees of the Miami Colonial to remain as witnesses in the room, and also who may be out in the lobby, to come [fol. 157] up here, if there are any of you witnesses here. We will hold that up, then.

Mr. Gettler: Mr. Mischel.

Thereupon—HENRY MISCHEL was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and address?

A. Henry Mischel, 3160 Southwest 19th Terrace.

Q. What is your occupation?

A. Professional chef. I am now business agent of Local 255.

Q. How long have you been business agent of Local 255?

A. I am business agent of Local 255 since August, 1954.

Q. Did you have any occasion, Mr. Mischel, within the past several weeks, to speak to any person in management at the McAllister Hotel?

Mr. Sibley: Do I understand, now, that you have left the Miami Colonial and your testimony is now being solely directed to the McAllister Hotel?

[fol. 158] Mr. Gettler: For this particular question and the series of questions that will be coming now: yes.

Mr. Sibley: All right. I am sorry.

The Witness: Yes. I had an opportunity to speak with people from the McAllister Hotel.

By Mr. Gettler:

Q. And when was that?

A. That was on a Tuesday, if I am not wrong—on Tuesday, May 10th.

Q. Tuesday, May 10, 1955?

A. 1955, yes, correct.

Q. And will you tell us how that meeting occurred?

A. Yes. I went to the McAllister Hotel accompanied by one of my fellow organizers.

Q. What is his name?

A. Dan Beauchamp.

Q. Approximately what time of day was that?

A. That was around 11:00 o'clock in the morning, and we entered the hotel, and I asked the receiving clerk if Mr. Nash was in his office. The clerk told me that Mr. Nash is in his office, but he had somebody with him, and for us to wait a while—a little while.

We both sat down on a chair and I waited for about ten or fifteen minutes until Mr. Nash came out of his office, [fol. 159] accompanied by some other gentleman, and after this man left, I approached Mr. Nash and identified myself with my name.

Q. That is Mr. Nash that you are referring to? Is that the Mr. Nash that you saw testify?

A. That is the same Mr. Nash.

Q. Continue.

A. The Manager of the McAllister. I approached Mr. Nash and I identified myself with my name, and as a business of agent of Local 255, and asked him if he would give me a few minutes of his time, as I have very important problems to talk over with him.

Mr. Nash refused to listen to me. He said, "I have no time for you." I then told Mr. Nash that I am not only an official of the Local 255, but official of the State Elks convention committee too, if he still would not listen to me, and he answered me, he said, "I still have nothing to tell you. You better leave the house." So we left.

While I was talking to Mr. Nash, an assistant of Mr. Nash spoke with Dan Beauchamp who was sitting in the hall, in the lobby. I do not know what they were talking about, but I saw that this gentleman motioned Mr. Beauchamp out of the house.

The Court: When was this?

The Witness: On May 10th, at 11:00 o'clock in the morn- [fol. 160] ing—11:00 A. M.

By Mr. Gettler:

Q. Now, after May 10th, did you make any further effort to contact Mr. Nash?

A. No; I did not.

Q. Mr. Mischel, in your capacity as business agent of the local union, have you obtained various membership cards in Local 255 of employees of the McAllister Hotel?

A. Yes, I have.

Q. I will hand you a group of—it will be lengthy—I will hand you a group of cards, and I will ask you if these are the cards which you have obtained, as business agent, of Local 255, of persons employed at the McAllister, designating Local 255 as their bargaining agent?

A. Those hotels have all been checked through me or through my assistant, and so on.

OFFERS IN EVIDENCE

Mr. Gettler: I will offer these cards in evidence.

Mr. Sibley: We have no objection. Put them all together.

(A group of cards just referred to was thereupon marked McAllister Exhibit A.)

Mr. Gettler: This next question will have to do with the Miami Colonial.

By Mr. Gettler:

Q. Mr. Mischel, in your capacity as business agent of [fol. 161] Local 255, have you also obtained similar designation cards of the Miami Colonial?

A. Yes, I have.

Q. I will hand you 31 such cards and ask you if those are the cards.

A. Yes, these are the cards.

Mr. Gettler: I will offer those cards in evidence.

Mr. Sibley: No objection.

(Group of cards just referred to were thereupon marked Defendant Colonial Exhibit C.)

By Mr. Gettler:

Q. Mr. Mischel, I will ask you whether or not, in your capacity as business agent of Local 255, you have also obtained these 87 cards of employees of the Biscayne Terrace Hotel?

A. These are the cards on the Biscayne Terrace.

Mr. Gettler: I offer these in evidence.

Mr. Sibley: No objection.

(87 cards just referred to were thereupon marked Defendant Biscayne Terrace Exhibit A.)

Mr. Gettler: I would like to ask Your Honor's permission to substitute for the original. These are the only originals we have of these two sets of the McAllister and Miami Colonial and Biscayne Terrace exhibits.

[fol. 162] The Court: It may be done later on application.

Mr. Sibley: I want to be heard at length on that, Your Honor.

By Mr. Gettler:

Q. Mr. Mischel, did you have any contact with management of the Biscayne Terrace?

A. Yes.

Q. Prior to the strike, which started, as I understand it, today.

A. Yes, I did have contact.

Q. When was your first contact with anyone in a supervisory capacity at the Biscayne Terrace?

A. Well, I had, on different occasions, but I had contact with Mr. Charlie Mays, catering manager. And I had contact with Mr. Rosen or Mr. Rosens. He is the resident manager, I suppose.

Q. You said you contacted Mr. Mays, the catering manager. When was that contact?

A. That was on May 11th or 12th.

Q. And will you describe to us exactly what that contact consisted of?

A. With Mr. Mays, I arranged certain activities in connection with the State Elks convention—Florida State Elks convention—from the State Elks convention headquarters

to take it out of the McAllister and put it in the Biscayne [fol. 163] Terrace Hotel.

Q. Specifically, I am asking you, Mr. Mischel, in regard to your position as business agent of Local 255, whether you had any contact with Mr. Mays?

A. Yes.

Q. Were those contacts on May 11th or 12th, you stated?

A. That was on the 11th—12th—approximately the 11th or 12th of May.

Q. Will you tell us about that?

A. We could not get any satisfaction in solution of our grievances with the McAllister Hotel, because nobody wanted to listen to us, and I had the responsibility, throughout the Elks Lodge to have a peaceful convention, and therefore I suggested to take the headquarters out of the McAllister Hotel, and I expected trouble in this hotel, while in the Biscayne Terrace we had, through Mr. Herman—at least, we had a conversation there, which means we had negotiations, the way I understood it with Mr.——

Mr. Sibley: I move to strike that testimony, which is based upon hearsay testimony, what he understood from somebody else.

The Court: Objection sustained; motion granted.

By Mr. Gettler:

Q. Will you tell us exactly what you discussed with [fol. 164] Mr. Mays?

A. I discussed with Mr. Mays, in view of the fact that we have peace in the Biscayne Terrace Hotel, at least for another week, I wanted all the arrangements for the Elks convention in his hotel, and I asked him if he could take care of it, and how many rooms we could have, and so on.

Q. Did you have any conversations with Mr. Rosas in your capacity as business agent of Local 255, in regard to any dispute between the Biscayne Terrace and Local 255?

A. Yes.

Q. What were those conversations?

A. I was informed, from Mr. Herman, that conversation took place——

Mr. Sibley: I move to strike that testimony on the ground it is hearsay testimony.

The Court: Motion granted as to the hearsay testimony.

By Mr. Gettler:

Q. Try to eliminate hearsay.

A. All right.

Q. Mr. Mischel, limit yourself to your own conversation with Mr. Rosas.

A. I arranged with Mr. Rosas, in order to straighten out the dispute which occurred between Local 255 and [fol. 165] some acts of Mr. Rosas. Mr. Rosas had—shall I say—I may call it an affidavit—put on the blackboard or on the time clock for all the employees to see, stating that there was never any conversation between Mr. Herman and the employer or the owner of the hotel.

This would have put Mr. Herman in front of all his employees as a liar, and we stated, the day before there was such conversations and negotiations going on, and I had instructions from Mr. Herman to speak——

Q. Don't go into that. Limit yourself to your conversation with Mr.——

A. —to go to Mr. Rosas and speak to him about, so I went to Mr. Rosas' office and I told him that this was not quite true; that there was a conversation, and on his affidavit on the blackboard is not right. Mr. Rosas then told me, that in the meantime he was instructed by telephone from Mr. Feidelbaum——

Q. Mr. Feidelbaum, the owner.

A. Feidelbaum—something like that—Feidelbaum—he was instructed by telephone that Mr. Feidelbaum is very sorry, he did not tell him before he left about this conversation, and that is why he put this leaflet on. He did not know nothing, and he was very sorry. It was one of those unfortunate acts, and he took it off immediately.

Q. Did Mr. Rosas—who you are referring to, is that the [fol. 166] Mr. Rosas that you heard testify approximately 45 minutes ago on this witness stand?

A. Yes.

Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. Mr. Mischel, you got a lot of cards signed by employees at these three hotels, did you not?

A. That is right.

Q. Those were part of your duties, to go into the hotels and talk to the employees and get them to sign up; was it not?

A. It was part of my duty.

Q. And when you go into the hotels and start talking to the employees about signing up with the union, sometimes you got into difficulty with management, did you not?

A. Yes; that is right.

Q. They objected to your coming on their premises and talking to their employees about union matters, when those employees were engaged in work.

A. I did not get it, exactly.

Q. Management objected to your coming on the hotel premises and talking to the employees, and trying to get them to sign up with the union, did they not?

A. That is right.

Q. And several times, they ran you out of the hotel? [fol. 167] A. Oh, yes; they did.

Q. And Mr. Nash tried to run you out again, did he not, when you were there doing the same thing?

A. No; not to run me out. He told me——

Q. He told you——

A. You know.

Mr. Sibley: That is all.

Redirect examination.

By Mr. Gettler:

Q. Mr. Sibley has added some words to this last question, Mr. Mischel. He said, when you were doing the same thing. Now, actually, the conversation that you described to us, on May 10th, will you go over it again. What was the purpose of your meeting with Mr. Nash on that date?

A. The purpose——

Q. And what you told him?

A. Of my meeting with Mr. Nash—it was—I tried to establish some negotiations with the manager of the McAllister. It is in order to halt, first of all, to avoid grievances and complaints from the people already that have been members of the union. My object was not to get more members. My object was to stop more complaints and grievances of the people—of the members of my union already employed in the McAllister Hotel, as those grievances would lead to labor trouble, and I was interested in keeping labor peace—the peace between management and labor at this time, especially. That was the object of my visit. [fol. 168]

Mr. Gettler: That is all. I have no further questions.

Recross examination.

By Mr. Sibley:

Q. Mr. Mischel, most of the cards that you got signed by the employees, at the McAllister Hotel, designated the Miami Hotel Trades Council as a bargaining agent for the employees, did they not?

A. That is right.

Q. They did not say anything about 255?

A. Let me see.

Q. Here it is——

A. Miami Trades Council; yes.

Mr. Sibley: That is all.

Redirect examination.

By Mr. Gettler:

Q. Mr. Mischel, is Local 255 a member of the Miami Hotel Trades council?

A. Yes.

Mr. Gettler: That is all.

Mr. Sibley: That is all.

(Witness excused.)

[fol. 169] Colloquy Between Court and Counsel

Mr. Gramling: With the Court's indulgence now, all the employees of the McAllister Hotel will please step up to the rail.

If Your Honor please, I will request the Court to swear these people as witnesses, and will run them through as to who voted, and how they voted.

Mr. Sibley: I object to this procedure, Your Honor, upon the ground it is immaterial and irrelevant, and no basis for the strike, and not even plead in the answer.

The Court: I am not going to sit here all night listening to these witnesses. In my opinion, it makes no difference what happened at that so-called election.

Mr. Gramling: Well, sir, may these employees——

The Court: I will assume that all of these employees will testify that they went to these polling places and signed those ballots, similar to those already identified.

Mr. Gramling: And that they have designated this union.

The Court: I do not know about the ballots.

Mr. Gramling: Sir, the bill of complaint says that we have no members at all. It says that two carpet baggers [fol. 170] came down here, and by force, coercion and intimidation, kept workers from going to work at these hotels, specifically, the McAllister Hotel.

Now, here are the employees. We would proffer their testimony, and that if they were permitted, they would——

The Court: State what they will testify to.

Mr. Gramling: —and it would be true that they have voted. First of all, they have authorized this union to represent them in bargaining and labor relations matters.

The Court: In what manner: by signing the cards introduced into evidence?

Mr. Gramling: By signing the designation bargaining agency rights; that they have participated in an election and have authorized——

The Court: That is the election supervised by Mr. Gyson.

Mr. Gramling: That is right; and that they have not been coerced nor intimidated; that they have refrained from going to work freely and voluntarily, as a matter of their own free will and accord.

The Court: And that each one voted affirmatively in the balloting on the question presented by the ballot?

[fol. 171] Mr. Gramling: They did; 84 did, yes, and we have——

The Court: How many employees of the McAllister are there?

Mr. Sibley: 180.

Mr. Gramling: Wait a minute.

The Court: How many witnesses do you have here who will so testify?

Mr. Gettler: The Statute, Your Honor, is the number of people affected.

The Court: I am not interested in statutes. I want to know how many of these witnesses there are here and what they will testify to.

Mr. Gettler: 84, Your Honor.

The Court: All right. I will assume, for the purpose of this hearing, that these 84 employees of the McAllister Hotel signed these cards designating Union 255 as their bargaining agent, and that each one participated in the election, supervised by Mr. Gyson and voted affirmatively on the question presented to them on the ballot.

Mr. Gramling: And that they have not been——

The Court: And that they have not been coerced into doing so.

Mr. Gramling: Pardon me, sir—and have not intimidated [fol. 172] anybody from crossing the picket line and going to work, and were not taken out of the hotel by threats and fear.

The Court: All right. I will assume that for the purpose of this hearing.

Mr. Gramling: Thank you so much.

Now, sir, we have 68 people from the Biscayne Terrace. May we have the same—may we have them step and have the same ruling?

The Court: Yes.

Mr. Gramling: Will those who are here from the Biscayne Terrace step up to the rail, and if there are any in the lobby, please ask them to step in here.

Sir, we have 68 available that we would make the same proffer in connection with the Biscayne Terrace.

The Court: I will indulge in the same assumption as to these 68 employees of the Biscayne Terrace.

Mr. Gramling: All right.

Sir, I would like, at this time, to explain into the record, please, sir, that we find we are not in a position to make the same showing tonight in the Miami Colonial Hotel, for the simple reason that none of the union officials knew, un-
[fol. 173] til they got here this evening, at 8:00 o'clock, that there was a lawsuit involved in the Miami Colonial.

The Court: How many witnesses do you believe would be available if you were given time?

Mr. Sibley: We have 31 cards there.

Mr. Gramling: I believe we have——

Mr. Gettler: 31 cards.

The Court: I will indulge in the assumption that you have 31 employees of the Colonial Hotel who, by signing the cards introduced into evidence, have designated Union 255 as their bargaining agent, and that each of them participated in the election, supervised by Mr. Gyson, and voted affirmatively on the questions presented on the ballot.

Mr. Gramling: And have not been——

The Court: And have not been intimidated, coerced, threatened or subjected to any duress or forced to take any action which they have taken.

Mr. Gramling: Thank you, sir.

Mr. Gettler: Your Honor, we have just learned that there is one additional fact that we consider important, that each one of the Biscayne Terrace employees would testify to——

The Court: Do you have the idea that I cannot sign an order on Sunday?

[fol. 174] Mr. Gettler: Oh, no. I have no knowledge whatsoever on that. The additional point which we have learned that each one of these employees was called in to a room and interrogated by management as to whether they participated in a strike vote, and as to exactly how they voted on that strike vote.

We proffer that testimony for the same 68 people.

The Court: Any objection to that proffer?

Mr. Sibley: I object to it, on the grounds it is immaterial and irrelevant.

Mr. Gettler: Certainly, it is grounds for a labor dispute.
The Court: I will indulge in that assumption.
Mr. Gettler: Mr. Herman.

Thereupon—DAVID HERMAN was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and address?
A. David Herman. I live in Miami Beach at the present time.
[fol. 175] Q. What is your occupation?
A. I am an organizer for the hotel employees union Local 255, at the present time.
Q. How long have you held that position?
A. Since about the 13th of February, 1955.
Q. In your position which you have just described, did you receive any complaints from the employees of the McAllister Hotel with regard to their working conditions at the McAllister Hotel?
A. Yes, I did.
Q. What were those complaints?

Mr. Sibley: I object to that, upon the ground it is hearsay testimony, and immaterial and irrelevant.
The Court: Overrule the objection.
The Witness: The employees—many employees at the McAllister Hotel, on different occasions, came to me and told me that they were working for wages which were far below that considered normal for their specific occupations—bartenders, cooks, maids—and that their hours were in excess of what is considered a human day's work; that they had absolutely no welfare benefits of any kind, to take care of them in the event of illness; that they worked long hours without overtime.
[fol. 176] The Court: I will stop this long tirade, by sustaining the objection, as it is not specific as to time, place

and persons with whom the conversations were. It seems to be a speech rather than testimony.

By Mr. Gettler:

Q. Mr. Herman, will you specify the times and places and names, insofar as you are able to, in giving these complaints, and will you, in order to shorten this, at the same time, tell us or give us a similar answer for the Biscayne Terrace and for the Miami Colonial?

A. As to the time—the times were on occasion of union meetings, that we held since the 13th of February, and in visits to my office during the period——

The Court: Name the persons, and what they said.

The Witness: Your Honor, I cannot possibly name the persons. I met about 3500 people.

The Court: If you cannot name the persons, let us end it.

The Witness: I can point them out. I cannot name them, because I met about 5000 people since I am here in 90 days, and I remember some of them by name, but not too many. I know they were the McAllister employees. They represented themselves to me as such.

[fol. 177] The Court: The objection is sustained.

By Mr. Gettler:

Q. Mr. Herman, have you engaged in any way in organizing the employees of the McAllister Hotel?

A. I have been engaged, yes, in an overall capacity, responsible for the organization of the hotel employees in Miami and Miami Beach, including the McAllister.

Q. And does that also include the Biscayne Terrace and the Miami Colonial?

A. Yes.

Q. Would you describe to us what departments of the hotel are covered by the jurisdiction of your local union?

A. The departments that are covered by the jurisdiction of Local 255 are the dining room, the kitchen, the housekeeper, front service.

Q. Does that include supervisory employees?

A. No, sir.

Q. Does it include secretarial employees?

A. No, sir.

Q. Now, in the course of your duties, did you learn how many employees there were working within the jurisdiction —within your jurisdiction at the McAllister Hotel?

A. Yes.

Q. How many?

[fol. 178] A. Approximately 120 employees.

Q. In the course of your duties, did you learn how many employees were working within the jurisdiction of your local union at the Biscayne Terrace?

A. Yes, sir.

Q. How many?

A. Approximately 85 employees.

Q. In the course of your duties, did you learn how many employees were working within the jurisdiction of your union at the Miami Colonial Hotel?

A. Yes.

Q. How many?

A. Approximately 35 employees.

Q. Did you have any contact with any of the owners or supervisors of the Biscayne Terrace Hotel?

A. Yes.

Q. With whom did you have contact?

A. I had contact with the owner, or one of the principal owners of the Biscayne Terrace Hotel, a man named Herman Feidelbaum.

Q. And when did that contact occur?

A. That contact occurred on Friday, May 13, 1955, most recently, I might say. I have had contact with this man, Mr. Herman Feidelbaum, over a period of the past ten years but not in the capacity as owner of the Biscayne [fol. 179] Terrace, nor in my capacity as organizer for Local 255.

Q. On Friday, May 13, 1955, approximately what time of day did you meet with Mr. Feidelbaum?

A. Approximately 9:30 in the morning.

Q. Where?

A. In his room in the Biscayne Hotel. I think it was Room No. 608.

Q. Who was present?

A. He and I were present, and on and off some people

came into the room. A waitress came in to serve breakfast for us, and some other people came in, whom I cannot identify. They appeared to be minor executives. They came in with papers and bills, and they saw he was busy and they left.

Q. Approximately how long did that meeting last?

A. The meeting lasted until about 11:15. I recall Mr. Feidelbaum had an 11:30 appointment, and we broke up in time for him to get that appointment.

Q. Will you tell the Court exactly what conversations between you and Mr. Feidelbaum were on that morning of May 13th, at the meeting that you described?

A. Yes. Our conversations were about the possibility of the recognition of the Hotel Employees Union Local 255, as a result of a collective bargaining election, as a result rather, of a representation election; the wages that [fol. 180] were currently being paid by Mr. Feidelbaum to his employees in the Biscayne Terrace Hotel; the hours that they worked, and what the difference—if the Court will permit, I would like to explain that we have contracts with Mr. Feidelbaum in New York City for three or four of his hotels, and we had a basis for discussion of making comparison between the situation in Miami and the situation in New York City, and how the wages would have to differ. There would have to be a difference in wages in favor of Miami, incidentally, and there would have to be a difference in hours, because our union had been in existence, in New York, for 17 years, and our contracts have been in existence, and here it was a union that was only a year old, and with its first contract, that we would want to start from scratch and make improvements as we went along.

Q. What you are describing, then, are negotiations, that is, labor negotiations between Local 255 and Mr. Herman Feidelbaum?

A. That is correct; definitely, yes. I was there as a representative of the union, and Mr. Feidelbaum was there as owner of the hotel, and we discussed the question of the wages, the hours, the conditions of employment, and all the other things that go in to make up a job.

Q. Did you advise Mr. Feidelbaum that you, or that Local 255 represented a great number of his employees?
[fol. 181] A. Yes. I advised Mr. Feidelbaum, and I also asked Mr. Feidelbaum to satisfy himself by questioning the employees, and Mr. Feidelbaum said he did not have to do that. "Dave, I have known you for so many years. If you tell me that you represent the employees, I take your word for it."

Q. Now, how did that meeting finally break up; was anything decided?

A. Yes. We arrived at a number of decisions. First of all, we decided that we were going to continue negotiations. We decided that we would establish the informal recognition of the union. Mr. Feidelbaum pleaded with me that he was new in this area, and that all the other hotel owners had been there longer than he, and that for him to come in and be the first one to recognize the union and to sign a contract with it would put him in the light of disfavor among the old established hotel owners here.

He said, "Let me see what I can do with the other fellows to try to influence them to come along with me so we can all go into this together, and meanwhile we will maintain a status quo here."

I said, "What do you mean by a status quo, and how long?"

He said that, "Leo Fields is the manager of the hotel," and his nephew, "is away in New York, and he had to have an operation. He will be coming back next week [fol. 182] or ten days," and he said, "When Leo comes back, you sit down and discuss details with him, and meanwhile we will maintain the status quo. We will not dismiss anybody because of their union activities. We will not interfere with their right to join a union."

I am quoting Mr. Feidelbaum—"and I will not have any trouble here. I do not want any trouble here, or in New York. We got along peacefully for the past 15 years, and we certainly do not want to start now."

So we agree to protect the status quo and no employees would be dismissed because of their membership in the union or because of union activities, and there would be a discussion commenced again when Mr. Leo Fields

returned from his illness in New York, and with that we shook hands and we parted.

Q. What occurred next after this meeting, so far as the Biscayne Terrace is concerned, and its relations with Local 255?

A. Well, immediately upon the conclusion of that meeting, I went back to my office, on Miami Beach, and I addressed a letter to the employees of the Biscayne Terrace Hotel advising them that there had been such a conference between Mr. Feidelbaum and myself, and that the status quo would be maintained, and for them to please be confident that there will be no necessity for any kind of labor [fol. 183] trouble insofar as the Biscayne Terrace Hotel is concerned.

The secretary mimeographed the letter, and it was distributed to the employees of the Biscayne Terrace Hotel at my direction.

Q. What occurred next?

A. Several hours later, I received a telephone call from one of the employees of the Biscayne Terrace Hotel, and he told me that Mr. Rosas—Mr. Val Rosas had posted——

Mr. Sibley: Who told you this?

The Witness: An employee.

Mr. Sibley: I object to that. It is hearsay testimony.

The Court: Objection sustained.

The Witness: All right. There was——

By Mr. Gettler:

Q. Leave out the hearsay.

A. There was brought to me several hours later—there was brought to me a memorandum of an inter office memo which has already been introduced in evidence, I believe, or if not, it has been referred to here. There was brought to me an inter office memorandum signed by Mr. Val Rosas, on the Biscayne Terrace Hotel stationery, which denied the statements that I had made to the employees.

Over Mr. Val Rosas' signature, the memorandum said that there had been no conference; no negotiations; no [fol. 184] nothing. I retained that document and worked out a reply to it. I worked out the reply on the same day,

or maybe it was the next day, in another letter to the Biscayne Terrace Hotel employees where I named the time, place, chapter and verse as to the exact hour that I got on the elevator, and have them check with the elevator operator, the room that I was in, and asked them to check with the waitress as to whether or not she served me breakfast with Mr. Feidelbaum in the room, and, in general, reiterated the statements that I had made originally.

I then asked Mr. Mischei to go down to the Biscayne Terrace Hotel and to discuss the problem with Mr. Rosas, to try and straighten out the misunderstanding.

The result of that conference was reported by Mr. Henry Mischel when he testified—the result of the conference between him and Mr. Rosas.

Q. Why did the strike occur, then, Mr. Herman, at the Biscayne Terrace Hotel?

A. The strike occurred at Biscayne Terrace Hotel because Mr. Feidelbaum's promise was broken by the people down here. I do not know whether it was with his knowledge or consent, or without it; but when we had agreed to maintain the status quo, and went on the basis of this agreement, and the Mayor requested me to see that there are no picket lines during the Elks convention here, and we [fol. 185] complied with it—and then the Biscayne Terrace turned around and interrogated every employee as to whether or not he is a member of the union; whether he voted in an election of the union; whether they intended to strike.

Well, that was a complete repudiation of the status quo verbal agreement that we entered into, and by disturbing the status quo, and then create the basis for the strike, and the employees were so coerced and intimidated, they had nothing else left to do except to walk out in an effort to save time, and that is why there was a strike called.

Q. Now, why was there a strike called at the Miami Colonial?

A. The reason there was a strike called at the Miami Colonial was the same way. We had discussions with Mr. Allenberg, not I, personally, but other officers of the union had testified to their discussion with Mr. Allenberg

for the past three or four weeks. We tried to get him to agree to an election—a secret ballot by the employees under an impartial supervision, and for him to be bound by the results of that secret ballot, and we were refused constantly and continuously, and all that we were getting was delay and stalling and acts of ill faith, of questioning people and trying to talk to them and talk them out of their membership in the union, and deprive them of their con- [fol. 186] stitutional rights to join the union, and, in general, intimidated the employees and, as a result, we had to call a strike to protect the organization.

Q. Why was there a strike at the McAllister Hotel?

A. The reason there was a strike at the McAllister Hotel was because of numerous attempts that were made by representatives of the union to persuade Mr. Nash to sit down and discuss the possibilities of arranging an election, of discussi grievances and entertaining complaints from employees, and he ordered the representatives of the union out of the hotel, refused to talk with them, and I called him on a half dozen occasions and left my—he was never available to answer my call, and left my telephone number, and asked for him to call me back, and never received a return call from him, and complete disregard of the rights of the employees to organize and bargain collectively, and for that reason there was a strike called there. There was a labor dispute in the hotel.

Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. Mr. Herman, did you know Mr. Sam Gyson before you made this present visit to Miami, commencing with January?

A. No, sir; I had never seen or heard of Sam Gyson [fol. 187] until one evening, I walked in the Vendome Hotel.

Q. You answered my question.

A. Never.

Q. You never attended any political meeting in New York with him of any kind or character.

A. Sir, I have never seen Sam Gyson in my life until the day I set foot on Miami Beach, on the 14th or 15th of February, 1955.

Q. Mr. Herman, do you know what the pay scale of the union is for bartenders in Miami?

A. Yes, sir. I know what some bartenders get in Miami. There is a union pay scale, if that is what you are referring to.

Q. I am asking you—do you know the union pay scale of bartenders in Miami?

A. It is not the question you asked me. You asked me if I knew the pay scale—you asked me whether I know the union pay scale——

Q. For——

A. —for Local 255. There is no pay scale.

Q. For 133, the union scale.

A. The union scale, for 133, I have no knowledge of it.

Q. Do you know what the union pay scale for waiters in the area here is?

[fol. 188] A. For Local 133?

Q. The union scale.

A. For which union?

Q. 133.

A. Yes. I do know what the scale is for waiters in the Miami restaurants and Miami Beach restaurants that have contracts with 133.

Q. What is that scale?

A. For waiters, it runs from $21.00 to $24.00 a week, depending whether they work just supper, or whether they work lunch and supper.

Q. Now, that is from $21.00 a week to $24.00 a week.

A. Yes. Let us simplify it by saying, if a waiter works only one meal in a union restaurant, such as the Embers, Fan and Bill's, and Park Avenue—places of that character—a union waiter gets $21.00 a week for six days' work, consisting of about six or seven hours for the meal, depending how long it takes.

Q. Do you know whether or not the bartenders at

the McAllister were paid more or less than the union scale of 133?

A. Sir, the bartenders—I have no knowledge. There was no Local 133 scale in the McAllister. The McAllister has no contract with 133. The McAllister does not recognize Local 133.

[fol. 189] Q. Do not beg the question, and we will get along a lot faster. Do you know whether or not the bartenders, in the McAllister Hotel, were paid more or less than the wage scale fixed by 133 for bartenders in the local area?

A. Sir, I have already testified that I do not know the scale of Local 133, for bartenders, and I cannot answer that question if I do not know the scale.

Q. Do you know whether or not the waiters, at the McAllister Hotel, were paid more or less than the wage scale of Local 133?

A. To the best of my knowledge, there are no waiters in the McAllister Hotel. The coffee shop consists of waitresses.

Q. Do you know if the waitresses were paid less?

A. To the best of my knowledge, they were paid less. They were paid less than the scale of Local 133.

Q. Do you know what they were paid?

A. It is my information that the waitresses, in the McAllister Hotel, were getting $15.00 a week.

Q. How much?

A. $15.00 a week.

Q. Do you know what the wage scale of Local 133 for waitresses is?

A. Yes. It is $16.50 a week.

Mr. Sibley: That is all.

[fol. 190] Mr. Gettler: That is all.

(Witness excused.)

Mr. Gettler: Mr. Beauchamp.

Thereupon—Donny Beauchamp was called as a witness on behalf of the defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Please state your name and address.

A. Donny Beauchamp, 531 Southwest 7th Street.

Q. What is your occupation?

A. I have been working in the catering department, dining room, in different hotels.

Q. On May 10, 1955, were you engaged as an assistant to Mr. Henry Mischel?

A. Yes.

Q. On that date, did you have occasion to go with Mr. Mischel to the McAllister Hotel?

A. Yes.

Q. About what time of day was that?

A. If I recall exactly, the time was between 10:30 and 11:00.

[fol. 191] Q. Will you tell the Court exactly what happened when you went there?

A. At that time, Mr. Mischel and myself, we went inside the lobby.

Q. Before you get to that, what was your purpose in going that day?

A. We had a report of one of the employees was fired for union activities, and we had instructions to go over there to try to get that man to go back to work.

Q. Go ahead and tell us what happened when you went to the McAllister, on the morning of May 10th.

A. We got there about 10:30 or 11:00 o'clock, and we sat down in different chairs, about 10 or 15 feet apart, and Mr. Mischel was talking with one of the bell boys or bell captains, and he went up to the desk and requested that he wants to talk to the manager by the name Mr. Nash.

About 15 or 20 minutes after, I saw a gentleman in a gray suit, by the name of Mr. Nelson, and with him was another gentleman that I recall now, or after I find out it was Mr. Nash, the general manager of the McAllister Hotel—Mr. Nash—and he, Mr. Nash, started talking to Mr. Nelson, and suddenly Mr. Nash—Mr. Nelson came to

me and asked if I was a guest of the hotel. I told—I answered Mr. Nelson, "No; I am not a guest of the hotel."

He said, "Are you visiting somebody here in this hotel?" I said, "No, sir; I am not visiting nobody. I just came in [fol. 192] with the gentleman sitting there talking to Mr. Nash."

Q. And you pointed to Mr. Mischel?

A. Mischel, because we are here—organizers of Local 255, and we want to talk, to see if we can get back this boy that was fired for union activities, or if we can do something for him.

Then Mr. Nash came over and he left Mr. Mischel on the side, and he came over and he told Mr. Nelson, get this man out of this building as soon as you can. I had a badge in the lapel of my coat and I showed it to Mr. Nash what it said, Local Organizers Union, 255, and my name was stamped on that badge, and he said, "I do not know where you belong. You get out, and you going to get out by that door," and I said, "You do not mind if I make a choice of the door that I want to walk out," and he said, "All right."

And he called Mr. Nelson, and he told Mr. Nelson, "Be sure this man gets out of this building as soon as he can." And I told Mr. Nash I would like to take my time. He said, "You get out. I don't want to see you around."

Then, in the way out, I started explaining to Mr. Nelson, what was the idea of our visit to the McAllister Hotel, and Mr. Nelson promised me that he could get back to the office to see some other boy or another person that was the boss of this boy that got fired, and he would tell [fol. 193] him to come out to see me outside the arcade of the building. I wait there for 30, 40 or 50 minutes and one hour, and nobody came out.

Q. And then you left?

A. I had to wait for Mr. Mischel, and we went over to some other place.

Mr. Gettler: That is all.

Cross examination.

By Mr. Sibley:

Q. As a union organizer, it was your job to get people to sign up the cards, was it not?

A. That was one of my jobs.

Q. You went into different hotels and got employees to sign up the cards.

A. I tried to do my best, sir.

Q. And when you go into these hotels and stop employees from their work and try to get them to sign the cards, sometimes the hotels ask you to leave, do they not?

A. Because I work in the outside of the hotel, when the employees come to work; not inside.

Q. As they are coming to work, you stop them and try——

A. I talk to them, and I try to do the promotion for union 255.

Q. Now, who was the man—what was the name of the [fol. 194] man that you say you and Mr. Mischel went to see about getting re-employed?

A. Gorstova Gonzalez.

Q. Gonzalez?

A. Yes.

Q. Where is he working now?

A. He is not working. He was fired from the McAllister.

Q. And you and Mr. Mischel had gone there for that purpose?

A. Yes.

Mr. Sibley: That is all.

Mr. Gettler: That is all. Step down.

Mr. Gramling: The defendants rest, Your Honor. Do you have any rebuttal?

Mr. Sibley: We close, Your Honor.

Mr. Gramling: When I use that word, "rest," I was wondering if Your Honor would be so gracious as to perhaps permit a five-minute recess and indulge us in summation, or perhaps——

COURT'S ORAL OPINION

The Court: I do not care to listen to any argument. I know what my ruling is going to be, and the argument would not be beneficial or helpful to me.

Some of my own views seem to have been overruled [fol. 195] by the Supreme Court of Florida, but I am guided and governed by the Supreme Court opinion filed May 27, 1955, in Sax Enterprises, Inc. versus Hotel Employees Union, Local 255, and others.

Of course, I realize that that decision may be receded from, on petition for rehearing, but I think I should be, at this time, guided and governed by the Supreme Court's opinion.

Now, as I construe the Supreme Court's opinion, the legal procedure for a union to pursue is to first establish that the employees have chosen the union as their representative.

Now, to do that, some sensible method should be employed. They should present to the management cards which have been signed by the employees, or certify the results of some election.

Of course, the employer may question that, but if the union is right and they have established, fairly, that the employees have chosen the union to represent them, and having established that relationship with the employees, then the union, in effect, should say, as to the management, the employees for whom we speak have certain grievances against the management and unless those grievances are corrected or remedied, we intend to picket; and then the [fol. 196] employer should be given a fair opportunity to engage in sensible negotiations for the purpose of determining whether or not the employer will meet the demands of its employees, speaking through its elective representatives—the union.

The union, I think, in this case—if the Supreme Court is right, and I must assume that it is—has been too precipitate. They have not elected to follow the procedure which the Supreme Court of Florida seems to think that the union should follow before it engages in picketing activities.

I think that the views of the Supreme Court are different from those which I have expressed and followed in other cases in which you, Mr. Gramling, have been counsel. But the Supreme Court of Florida is not to be overruled by me, and I will follow its decision. Therefore, picketing from this moment on at the three hotels is enjoined.

Mr. Gramling: If Your Honor please, we have filed an answer, and may we consider this as a final hearing, please, sir.

The Court: No.

Mr. Sibley: No, sir; I do not. I have other testimony to offer at final hearing.

(Thereupon the hearing was concluded.)

[fol. 197] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 199]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,056

ABE ALLENBERG, A. BIRENBAUM, MORRIS ROSENBERG, MORRIS FISHER, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255, (A. F. of L.) et al., Defendants.

AMENDMENT TO INJUNCTIVE ORDER—June 1, 1955

The Court, of its own motion, hereby amends the injunctive order heretofore rendered on the 29th day of May, 1955, by adding the following paragraph:

Plaintiffs be and they are hereby required to give, execute and file in this cause, a good and sufficient injunction bond in the sum of $2,500.00, conditioned to pay all loss and damages sustained by the defendants in the event

the temporary injunction is dissolved, or the bill of complaint is dismissed.

Done and Ordered in Chambers, at Miami, Florida, this 1st day of June, 1955.

/s/ Vincent C. Giblin, Circuit Judge.

[fol. 200]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,056-C

[Title omitted]

ANSWER—Filed June 3, 1955

Come now the defendants and make this their Answer to the complaint and answering, say:

1. That they admit the identity of the parties hereto as alleged in Paragraph 1.

2. That they are without knowledge as to the matters and things set forth in Paragraph 2, but aver that if the said hotel enjoys a fine reputation and valuable good will that such asset has been created in large measure by the excellence of performance by the many employees of said hotel while said employees are yet not recognized by the plaintiffs through their duly designated representative of their own choosing, to-wit: Hotel Employees' Union Local No. 255; and that the purpose of this instant litigation is to deprive the said employees who have contributed so richly to the success of plaintiff hotel of their constitutional and statutory guarantees of being represented for collective bargaining purppses (sic) by representatives of their own choosing.

3. Defendants admit that the said hotel employs many people as cooks, waiters, bell boys, maids, elevator operators and other similar duties normally required to operate [fol. 201] and maintain a hotel, but deny the remaining allegations of Paragraph 3 of the complaint and aver that the employees of plaintiff's hotel have long been dissatis-

fied with their wages, working conditions and other phases of the employer-employee labor relationship and aver that plaintiff has suffered a large turn-over in the employees, because of the sub-standard rate of pay, working conditions, adjustment of grievances and other inter-related factors; and would aver that the many complaints on the part of the employees have been properly brought to the representatives of their own choosing as guaranteed by law, to-wit: Hotel Employees' Union Local No. 255, A. F. of L.; but that plaintiff hotel has at all times refused to negotiate or settle the many differences and grievances existing and under which the employees are now suffering.

4. Your defendants, not waiving their Motion to Strike Paragraph 4 of the complaint, would show that the individual officers of this union named in the complaint have been bona fide residents of this jurisdiction for many years respectively, to-wit:

Al Berlin	thirty-two years
Clarence L. Smith	eighteen years
Harry Mischel	eighteen years,

and are local home owners, maintaining their families as an integral part of Dade County, Florida, and that the said union was chartered by its International Union March 1, 1954 with a membership at that time of approximately thirteen hundred members; and that the said union has a present membership of approximately five thousand members; that because of the tactics of the plaintiff employers and other employers in the Community, acting in concert with the plaintiff in this cause, the employees of this plaintiff were denied representation in labor matters by agents of their own choosing and their wages were held far below existing standards in communities of similar size and nature; that hours per week are longer and more arduous than prevail in all similar establishments in other communities; that no machinery is tolerated by plaintiff employer for adjustment of bona fide grievances and that the employees of plaintiff generally were oppressed and militated against to such extreme that their anguished cries were heard in Cincinnati, Ohio, whereby and whereupon the

Hotel and Restaurant Employees and Bartenders International Union, consistent with its gracious objectives, did lend aid, comfort and support to the oppressed employees by [fol. 202] lending them the services of said Dave Herman for the purpose of appealing to plaintiffs and their respective consciences, if any, in the hope that these employees may be liberated from the economic bondage in which they are currently unmercifully shackled.

5. Your defendants deny that they have never sought to negotiate with the plaintiff as the representative of plaintiff's employees and aver that Local 255 represents the vast majority of plaintiff's employees. Defendants admit that plaintiff has had no dealings whatever with any members of defendants' organization, but aver that the plaintiffs have failed and refused to have any dealings whatsoever with members of the Hotel Employees Union Local No. 255 A. F. of L., as a result of refusal to recognize the constitutional and statutory guarantee of the many employees in the matter of self-organization and collective bargaining; and your defendants deny each and every of the remaining allegations of the said Paragraph 5.

6. These defendants answering Paragraph 6 deny that the plaintiffs have never refused to recognize the defendant Union and aver to the contrary that the very existence of this litigation and of the picketing line complained of in Paragraph 6, conclusively establishes that there has been no recognition of the bargaining agent or the labor representative of the employees and in making answer to Paragraph 6, would respectfully direct the attention of the court to plaintiff's own words in the first sentence of Paragraph 5 of the complaint, to-wit: "The plaintiff has had no dealings whatever with any members", etc., and your defendants aver that the cause of the picketing complained of in Paragraph 6 is admitted by plaintiff in the aforequoted opening words of Paragraph 5; and these defendants deny that they are picketing to require the plaintiff hotel to execute a labor contract and aver that no proposed labor contract has been submitted to plaintiff, for that plaintiff has failed and refused to recognize the Union or to in any manner negotiate or to consent to negotiate in the matter of a labor

contract whatsoever; and these defendants deny that they seek to force the plaintiff to execute a contract in order to coerce and force plaintiff's employees to become members of said Union for that this union undertakes to represent only such employees as have duly designated this union as [fol. 203] the representative of their own choosing, as provided for in FSA 447.03. Your defendants deny those allegations of Paragraph 6 averring that the only efforts to obtain recognition of the Union on behalf of its member-employees was held May 28, 1955 and would show to the contrary that the Union speaking by and through its member-employees had long sought and solicited recognition in order that wages, hours and working conditions and adjustments of personal grievances by employees could be discussed and agreed upon and that the said Abe Allenberg would invariably "stall" in making any response whotsoever to such requests alleging that he could not get in touch with his partner who was out of the city. It is well known to plaintiffs and defendants that in all other matters when Abe Allenberg desires to contact his partner he manages to do so in each instance with no delay whatsoever by a long distance telephone, but in this instance he invariably "stalled" your defendants over a long period of time, claiming that he could not contact his partner. That when it became apparent that Abe Allenberg would not deal with the Union as representative of its member-employees, pickets were placed about the premises of the Miami Colonial Hotel pursuant to outcome of a strike election, by secret ballot which was held pursuant to ample notice and publicity as a result of which secret ballot, the employees of plaintiff did authorize, by an overwhelming majority of the employees to be governed thereby a strike of the said Miami Colonial Hotel;

And your defendants would show that not only has plaintiff refused to negotiate or discuss any matter or thing whatsoever with your defendants, but that your defendants have written demand upon the plaintiff, all according to affidavit, which is attached hereto and made a part of this Answer as though herein set forth in haec verba and the failure to respond to this written Notice further demonstrates that the plaintiff was never willing to recognize

the bargaining agent of its employees that had been designated by said employees pursuant to the several laws of the State of Florida controlling, particularly Chapter 447.13 Laws of Florida, and Articles 1, 5, 13 and 14 of the Constitution of the United States of America.
[fol. 204] Your defendants are without knowledge as to any law of the State of Florida providing for the certification of any Union as the bargaining agent of plaintiff's employees and demands strict proof thereof.

7. Defendants deny each and every of the material allegations of Paragraph 7 as fully and completely as though each were herein set forth and severally categorically denied, and your defendants deny that the picket line was placed in retaliation to the Supreme Court of Florida ordering an injunction prohibiting the picketing at the Saxony Hotel and aver that the picketing was in response to the demand of the overwhelming majority of the employees of the plaintiff as aforesaid.

8. Defendants deny each and every of the material allegations of Paragraph 8 as fully and completely as though each were herein set forth and severally categorically denied.

9. Defendants deny each and every of the material allegations of Paragraph 9 as fully and completely as though each were herein set forth and severally categorically denied.

10. Defendants are without knowledge of any law of the State of Florida or otherwise, which would require notice or opportunity for the plaintiff to present its cause to the Court prior to any picketing and otherwise denies the material allegations, if any, of Paragraph 12 of the complaint.

11. And your defendants would show that the plaintiff seeks to maintain this litigation in a court of equity and good conscience with unclean hands, for that the plaintiff has denied to its many employees the statutory and constitutional guarantees of representation and collective bargaining as afore set forth and are endeavoring to frustrate and to bring to naught the provisions of the aforesaid statu-

tory constitutional clauses and enactments, contrary to equity and good conscience.

That your defendant Union as the spokesman and representative of its members who are employed by plaintiff, has long sought to bring about negotiations and the plaintiff has failed and refused to respond to the invitations and solicitations of this defendant union, acting on behalf of its members and that the picketing became necessary in [fol. 205] order to appeal to the friends and sympathizers of the members of defendant union who are employed by plaintiff, in an endeavor to cause plaintiff to recognize your defendant Union as a lawfully constituted bargaining agent, as aforesaid; that in the utmost of good faith, your defendant Union has invited plaintiff to hold an election by secret ballot under any fair and impartial authority and by such secret ballot, demonstrate to plaintiff the bona fides of defendant Union's assertion concerning majority representation.

That plaintiff seeks to deprive these defendants and the members of defendant Union of the constitutional guarantee of freedom of speech, as provided for in Article 1 and 14 Bill of Rights, Constitution of the United States of America and the similar provisions of the Declaration of Rights of the Constitution of the State of Florida and the guarantee of Chapters 447.03 and 447.13 Laws of the State of Florida.

And defendants would respectfully show unto this Honorable Court that the allegations of the Complaint and the prayer for relief in said complaint predicated upon such allegations alleging and averring a failure on the part of your defendants to meet the requirements of 447.09 (3 and 4) seek only to deprive your defendants of their constitutional guarantees of freedom of speech and to impose upon the individual members of the defendant union an involuntary servitude contrary to the provisions of the 1st, 13th and 14th Amendments of the Constitution of the United States of America for that the requirement of a majority vote, by secret ballot of all employees to be affected by a proposed strike would be to abridge and deprive each individual of his constitutional right to speak freely his opinions and to refrain from working, individually or in

concert with others, contrary to the aforesaid Constitutional provisions; that the said Statute would impose a prior censorship upon the right to freely express one's opinions and to refrain from working and to make known the facts of a labor dispute; that the provisions of said Statute if applied to the facts of this instant case so as to grant the relief prayed for by the plaintiff would be to abridge these defendants and the members of the Union of their Constitutional guarantees as aforesaid.

Wherefore, your defendant Union prays this Honorable [fol. 206] Court that should this Honorable Court prefer to ascertain the fact of the majority representation by this Union through the process of election under control of the Court, rather than by the fair and impartial election held heretofore, then a commissioner be appointed to hold an election among the plaintiff's employees as of the commencement of the aforesaid strike and ascertain and report to this Honorable Court the truth and accuracy of the foregoing statement as to majority representation by the said Union and that this Honorable Court enter its Declaratory Decree declaring this Union to be in fact the duly authorized representative of the majority of plaintiff's "service" employees and that upon judicial ascertainment and Declaratory Decree, that this Honorable Court by its mandatory injunction, require the plaintiff to negotiate and bargain in good faith with this Union on behalf of the members of the Union, who are the employees of plaintiff, as is contemplated by Chapter 447 of the Laws of the State of Florida, together with Section 12 of the Bill of Rights, Constitution of the State of Florida and to deny the relief sought in the original complaint.

Gramling & Gramling, J. W. Brown, Ben Getler, By Carrington Gramling, Solicitors for defendants, 224 Shoreland Building, Miami, Florida.

Certificate of service (omitted in printing).

[fol. 207]

AFFIDAVIT OF DON BIZZARO AND DUNBAR NORMAN

State of Florida,
County of Dade, ss.:

Personally appeared before me the undersigned authority, Don Bizzaro and Dunbar Norman, who, being by me first duly sworn, depose and say as follows:

"On June 1, 1955, at 1:56 P. M. we did personally deliver to Abe Allenberg, in the lobby of the Miami Colonial Hotel, a letter, copy of which is attached hereto and made a part of this affidavit."

Further affiants sayeth not.

/s/ Don Bizzaro, /s/ G. Dunbar Norman.

Sworn to and subscribed before me, this 2nd day of June, A. D. 1955.

/s/ Sylvia R. Lathero, Notary Public State of Florida at Large.

My commission expires: Aug. 20, 1955.

(Seal)

[fol. 208]

CLUBS NOTE RE:

(2) pages—Carbon copy of Letter from David Herman to Miami Colonial missing from this record.

[fol. 209]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

In Chancery 180,056-C

[Title omitted]

MOTION TO VACATE TEMPORARY RESTRAINING ORDER—
Filed June 6, 1955

Come now the defendants and move this Honorable Court to vacate the temporary restraining order heretofore entered at approximately 1:05 o'clock A.M. Sunday, May 29, 1955, and as grounds for said motion would respectfully

show unto this Honorable Court that the defendants are ready, willing and able to make further showing of matters and things as required to be heard by the Supreme Court of Florida in its Opinion of May 27, 1955 in that recent Certiorari wherein Sax Enterprise, Inc., was petitioner and defendants herein were respondents.

And your defendants pray an immediate hearing thereon.

Fuller Warren, Gramling & Gramling, J. W. Brown, Solicitors for Defendants, By /s/ Carrington Gramling, 224 Shoreland Building, Miami, Florida.

Certificate of service (omitted in printing).

[fol. 210]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

In Chancery

Cause Numbered 180054-A

MCALLISTER HOTEL, INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Defendants.

Cause Numbered 180055-B

BISCAYNE TERRACE HOTEL, INC., Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Defendants.

Cause Numbered 180056-C

ABE ALLENBERG, et al, d/b/a MIAMI COLONIAL HOTEL,
Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al.,
Defendants.

OPINION AND ORDER—June 10, 1955

Giblin, Circuit Judge:

The Supreme Court of Florida in Sax Enterprises, Inc. v. [fol. 211] Hotel Employees Union, Local No. 255 (in which the court's opinion was written by Mr. Justice Hobson) has prescribed the procedural course which must be adopted and followed by a labor union before there can be a lawful picketing of an employer's place of business.

The court, in the cited case, said that "in order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative . . . and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations."

Guided and governed by the Supreme Court's decision, I entered interlocutory orders by which picketing at the three hotels involved in these cases was enjoined. I held that the picketing was unlawful; and one of the factual bases for the holding was that the union had not established that the employees had chosen it as their representative.

Counsel, in oral argument, have advised me that at the hearing before the appellate court in the cited case Mr. Justice Hobson, in answer to an inquiry as to the method which should be employed by the union in establishing that the employees had chosen it as their representative, replied that the union should submit to the employer "trustworthy" evidence of the selection by the employees of the union as

their bargaining agent. Without any attempt to express in clearer or better language the sensible and logical extemporaneous response of Mr. Justice Hobson (who later wrote the Court's opinion), my interpretation of his opinion is that it is incumbent on the union, before the economic weapon of picketing may be legally used, to present to the employer [fol. 212] evidence which would or should be satisfactory and acceptable to a fair, reasonable and prudent employer.

The testimony and proofs adduced at the hearing of the plaintiffs' applications for interlocutory injunctive relief in these cases showed conclusively that, before the union's picketing of the three hotels began, the union had submitted to the employers no evidence whatever that the employees had chosen it as their representative other than the unsupported assertion of a small group of union officials or agents that the union represented the employees.

It is obvious, therefore, that at its inception the picketing was unlawful and that, had I not enjoined it, I would have been guilty of a deliberate refusal to comply with the directives of our court of last resort.

The evidence, at the hearing of the applications for temporary restraining orders and at the hearing of the defendant union's motions to dissolve the injunctions, disclosed that, simultaneously with the initiation of the unlawful picketing, a number of the employees of each of the three hotels struck and walked out, abandoning their work. Their action, as the Supreme Court of the United States has held in National Labor Relations Board v. Sands Manufacturing Co., 306 U. S. 332, privileged their employers to engage other employees to fill their places.

The evidence reveals that the employees who servered (sic) their relations with their employers have been lawfully replaced by permanent employees, who, so far as the evidence shows, are not members of or represented by the defendant union.

[fol. 213] Assuming, without deciding, that the former employees who walked out on strike had chosen the union as their representative, there has been no showing at the hearing of the motions for the dissolution of the injunctions that any of the present employees have selected the union as their bargaining agent or that they have any grievances

against the employers. If, in fact, the union had been designated as their bargaining agent by the former employees, they no longer occupy the status of employees of the plaintiff employers.

At the conclusion of the initial hearing I expressed the opinion, to which I adhere, that the union had acted precipitately. Not only did it act precipitately, but it acted unwisely. By inducing the former employees to leave their employment, before there had been compliance with the procedural rules prescribed by the Supreme Court, the union was guilty of a disservice to such employees, because its precipitate action privileged the employers to supplant the employees who abandoned their jobs with other employees.

The motions to dissolve the injunctive orders should be, and they are, denied, because it has not been established that the defendant union has been chosen by the present employees as their bargaining agent. See Basch & Sons, Inc. v. Retail Union of New Jersy, (sic) Local 108 (N.J.), 99 Atl. 2d 519. The circumstances are such that to permit a resumption of picketing would be an unwarranted exercise of judicial power. I cannot remedy the mistake which the union and the former employees made by their hasty and ill-advised action.

[fol. 214] The primary purpose of resumed picketing could only be to compel the discharge of the present employees and the reinstatement of the former employees. Such a purpose would be an unlawful one.

This order is signed in triplicate so that a counterpart may be filed and recorded in each of the three cases.

Ordered in chambers in the Courthouse of Dade County, Florida, at Miami, June 10, 1955, by

/s/ Vincent C. Giblin, Circuit Judge.

Certificate of service (omitted in printing).

[fol. 215]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

In Chancery No. 180056

[Title omitted]

STIPULATION RE FINAL HEARING—Filed December 5, 1955

It Is Stipulated by and between counsel for the respective parties that all testimony and other evidence heretofore introduced in this cause be and the same is hereby reaffirmed for the purpose of Final Hearing, with the single addition however, that at said Final Hearing, the defendants would produce Clarence Smith as a witness, who would testify according to affidavit attached hereto, and it is

Stipulated that said testimony would be objected to on the grounds that said testimony is immaterial and irrelevant; and it is

Stipulated that this testimony and the objections thereto be submitted to the Chancellor for ruling thereon, and in the event the objection is sustained, the affidavit shall remain as part of the record as a proffer, and all objections as to form of such proffer be and they are hereby waived.

It Is Further stipulated that Final Decree be entered by the Chancellor upon the record as now made in the light of this Stipulation.

[fol. 216] Witness our hands at Miami, Dade County, Florida this 30 day of November, 1955.

Sibley & Davis, Attorneys for Plaintiff, By /s/ Darcy A. Davis.

J. W. Brown and Gramling & Gramling, By Carrington Gramling.

[fol. 217]

In Chancery No. 180056

AFFIDAVIT OF CLARENCE SMITH FOR DEFENDANTS

State of Florida,
County of Dade, ss.:

Personally appeared before me the undersigned authority Clarence Smith, who being by me first duly sworn deposes and says as follows:

My name is Clarence Smith, and I am Business Agent of Hotel Employees Union, Local 255. That plaintiffs, in the operation of their hotel are engaged in a business which affects interstate commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida, and from various countries outside of the United States by various interstate and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as interstate railroads, interstate bus lines, interstate and international steamship companies, and by passenger automobiles. Said business further is part of [fol. 218] "package deal" arrangements with said various interstate and International airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Transworld Airlines, National Airlines, and many others; various interstate and international steamship companies including Peninsular and Occidental Steamship Companies, Waterman Steamship Corporation, and many other companies; various interstate railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coastline Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various interstate bus lines companies including Greybound (sic) Bus Lines Company, Trailways Bus System and various other interstate bus line companies. Said "package deals" arrangements are arangements (sic)

whereby persons in states other than the state of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said interstate and international sales. The advertising and selling of the said "package" tours are done jointly by Plaintiffs and said interstate carriers. All expense incurred in promotion, making and consummating said interstate and international sales are jointly shared by Plaintiffs, and said interstate and international carriers. The proceeds of said interstate and international sales are divided between plaintiffs, as operators of said hotel and said interstate and international carriers; said sales of plaintiffs in interstate commerce exceed in volume amount sufficient to establish jurisdiction of National Labor Relations Board under its rules and regulations.

Said plaintiffs, as a part of the operation of said hotel, purchase numerous items from outside of the State of Florida and numerous other items within the state of [fol. 219] Florida, which have been shipped into the state of Florida. Said plaintiffs, as a part of the operation of said hotel, sell directly outside of the state of Florida and within the state of Florida for carriage or re-sale, outside of the State of Florida. Said plaintiffs as part of the operation of said hotel, advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the states of the United States outside the state of Florida and in various countries outside of the United States.

Further affiant sayeth not.

/s/ Clarence L. Smith

Sworn to and subscribed before me, this 15th day of November 1955.

/s/ Sylvia R. Lathero, Notary Public State of Florida at Large.

My commission expires: Aug. 20, 1959.

(Seal)

[fol. 220]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

In Chancery No. 180,056-C

ABE ALLENBERG, et al., d/b/a MIAMI COLONIAL HOTEL, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

FINAL DECREE—December 5, 1955

This Cause coming on to be heard upon final hearing pursuant to the Stipulation of the parties to this cause, and it appearing to the Court that the defendants proffered the affidavit of Clarence Smith as evidence upon this final hearing, and plaintiffs objected to said affidavit on the ground that the same is immaterial and irrelevant, and the Court sustains the objection thereto upon said grounds. The Court having considered the entire record in this cause, including the testimony taken before the Court, and the Court being fully advised in the premises,

It Is Thereupon Ordered, Adjudged and Decreed that the restraining order heretofore rendered against the defendants, and each of them, which order is recorded in Chancery Order Book 1187, at Page 133, in the records of the Clerk of the Circuit Court of Dade County, Florida, be and the same is hereby made permanent. The injunction bond filed herein is hereby cancelled and the principal and [fol. 221] surety released of all liability thereunder. The costs of this cause hereby assessed in the sum of $22.50 are taxed against the defendants, for which let execution issue.

Done and Ordered in Chambers at Miami, Florida, this 5th day of December, 1955.

Vincent C. Giblin, Circuit Judge.

[fol. 222]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

In Chancery No. 180,056-C

ABE ALLENBERG, A. BIRNBAUM, d/b/a/ MIAMI COLONIAL HOTEL, MORRIS ROSENBERG, MORRIS FISHER, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, (A. F. of L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

NOTICE OF APPEAL—Filed January 4, 1956

The defendants, Hotel Employees Union, Local No. 255, et al., take and enter their appeal to the Supreme Court of Florida to review the order, judgment or decree of the Circuit Court for Dade County, bearing date the 6 day of November, 1955, entered in the above styled cause and recorded in the records of said Court in Book 1214, Page 583, and all parties to said cause are called upon to take notice of the entry to this appeal.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants. By Carrington Gramling.

[fol. 223]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

In Chancery No. 180,056-C

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 13, 1956

Come now the defendants by their undersigned solicitors and make the following assignments of error as the errors

which they intend to rely upon in the Supreme Court of Florida, for a reversal of the Order (or Final Decree) made herein on the 6th day of December, 1955, and recorded in Chancery Order Book 1214, page 583 of the records of this Court, from which they have appealed:

1. The Court in enjoining the defendants in peaceful picketing the business place of the complainants, whereby your defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly, and the right to work or refrain from working as guaranteed within the meaning and scope of Sections I, XII, XIII, XVII, and XIX, Declaration of Rights, Constitution of the State of Florida, and Amendments I, V, XIII and XIV of the Constitution of the United States of America.

2. The Court erred (in and by such final decree) in finding that the defendants should have established to the satisfaction of the employer, that the employees had chosen defendant Union as their representative and further requiring that the labor organization must also inform the employer of the object to be accomplished by [fol. 224] picketing and afford an unwilling or hostile employer an unspecified waiting period within which to engage in negotiations, all as a prerequisite to the right to strike and picket, whereby your defendants and the Union members became disenfranchised from the exercise of their constitutional guarantee of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments I, V, XIII and XIV of the Constitution of the United States of America.

3. The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the mem-

bers of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

5. The Court erred (in and by such final decree) in enjoining peaceful picketing and the dissemination of information predicated upon an unsubstantiated finding of fact, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

6. The Court erred in requiring a direct employer-employee relationship as a prerequisite to picketing and as a prerequisite to publicizing the existence of a labor dispute, contrary to Amendments I and XIV of the Constitution of the United States of America.

7. The Court erred (in and by such final decree) in permanently enjoining peaceful picketing and the publicizing of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefor, and beyond the scope of any finding of fact insubstantial or otherwise, thereby depriving the members [fol. 224-A] of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

8. The Court erred (in and by such final decree) in finding that the action of striking and picketing was "precipitate" in the light of the surrounding facts and thereupon enjoining all possible picketing and all dissemination of information, thereby depriving the members of this Union the guarantees of Amendments I and IV of the Constitution of the United States.

9. The Court erred (in and by said final decree) in assessing costs against the defendants.

J. W. Brown, Gramling and Gramling, Solicitors for Defendants, By Carrington Gramling.

[fol. 227] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 229]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957—DIVISION B.

Case No. 28,251

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

ABE ALLENBERG, A. BIRNBAUM, etc., et al., Appellees.

An Appeal from the Circuit Court for Dade County, Vincent C. Giblin, Judge.

J. W. Brown and Gramling & Gramling, for Appellants.

Sibley & Davis and Thomas H. Barkdull, Jr., for Appellees.

OPINION PER CURIAM—Filed March 15, 1957

Affirmed on authority of Fontainebleau Hotel Corp. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., opinion filed February 1, 1957.

Terrell, C.J., Hobson, Drew and O'Connell, JJ., Concur.

[fol. 231]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957—DIVISION B.

Case No. 28,251

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

ABE ALLENBERG, A. BIRNBAUM, etc., et al., Appellees.

JUDGMENT—March 15, 1957

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellees do have and recover of and from the Appellants their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

[fol. 240] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. A]

IN THE SUPREME COURT OF FLORIDA

Case No. 28,243

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

A. H. S. CORPORATION, a Florida corporation, Appellee.

Transcript of Record—Filed April 5, 1956

J. W. Brown and Gramling & Gramling, 226 Shoreland Building, Miami, Florida, Attorneys for Appellants.

Sibley & Davis, Thomas H. Barkdull, Jr., 605 Lincoln Road, Miami Beach, Florida, Attorneys for Appellee.

[fol. 1]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180268

A. H. S. CORPORATION, a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, (A. F. of L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

COMPLAINT FOR INJUNCTION AND OTHER RELIEF—
Filed June 6, 1955

Comes Now the plaintiff, A. H. S. Corporation, a Florida corporation, by its undersigned attorneys, and bring this, its Complaint for Injunction and Other Relief against the

defendants, Hotel Employees Union, Local No. 255 (A. F. of L.) and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, and alleges:

1) Plaintiff is a duly organized corporation with its principal place of business in Miami Beach, Dade County, Florida.

Defendant, Hotel Employees Union, Local No. 255 (A. F. of L.) is a labor organization within the intent and purview of the laws of the State of Florida; Albert H. Berlin, Clarence L. Smith and Henry Mischel, are each residents of Dade County, Florida, and are each over the age of twenty-one years; that said individual defendants, and each of them, are the duly authorized business agents and officers of said labor organization.

[fol. 2] 2) Plaintiff is the operator of the Nautilus Hotel, which is an ocean-front hotel consisting of approximately 252 rooms, located at 1825 Collins Avenue, Miami Beach, Florida. This hotel has a reasonable value and worth of approximately Four Million Dollars ($4,000,000.00). Said hotel has been in operation for approximately four (4) years and the plaintiff operates in connection therewith a cocktail lounge, dining room, swimming pool, cabanas and other various facilities usual and necessary in the operation of a first-class hotel. The plaintiff's hotel has enjoyed for many years the finest reputation and has earned an excellent and valuable good will and is nationally known and recognized as one of the leading hotels of Miami Beach. The plaintiff's hotel business has become lucrative. It caters to the public by maintaining a dignified atmosphere, serving only the highest grades of foods and beverages, and by rendering superlative service to its patrons and guests.

3) Employed at the plaintiff's hotel are approximately 133 employees who perform services as cooks, waiters, bell boys, maids, elevator operators, and other similar duties normally required to operate and maintain a first-class hotel. The plaintiff has had no labor dispute with its employees with regard to wages, working conditions or any other phase of employer-employee labor relationship exist-

ing between the plaintiff and its employees. The plaintiff has enjoyed the most cordial labor relations with its employees, and has at all times afforded to its employees a satisfactory standard of pay and working conditions. The [fol. 3] plaintiff has received no complaints from its employees with reference to their wages, hours, or working conditions, and is wholly unaware of any labor dispute of any nature, character or description existing between it and its employees.

4) Plaintiff believes and is informed that sometime early in 1955, one or two carpet-bagger labor organizers arrived in Miami Beach with the announced intention of stirring up labor discord between employers and employees at several of the hotels on Miami Beach, with the purpose in mind of creating for themselves, a lucrative labor organization by which said carpet-bagger organizers could reap a harvest of money from the employees of the hotels in Miami Beach through dues which the said organizers expected to charge said employees in the event they could inveigle said employees to join with said organizers in creating a labor union. These northern organizers announced that they intended to form a labor organization, and they have named their alleged organization, Hotel Employees Union, Local No. 255, A. F. of L. Said union had no members except the two professionals who arrived with the announcement that they constituted said labor organization.

Since said time, the two organizers, one of whom is David Herman, and the other is one of the defendants, Albert H. Berlin, have utilized all the pressure tactics known to labor organizers to force and intimidate the employees of the plaintiff to become members of said labor [fol. 4] organization. Their efforts in enlisting membership has been a distinct failure, so the said professionals determined to place pressure, intimidation and threats upon the hotel owners, in order to force said hotel owners through economic sanctions, to sign contracts with the said alleged organization, and thus use said contracts as a basis to force the employees of the hotels to become members of said alleged union.

To this end, said David Herman contacted Saul Cohen, president of the Miami Beach Hotel Owners Association, and demanded that the said Cohen negotiate with and line up all of the owners of the first-class ocean-front hotels on Miami Beach, to execute labor contracts with the said alleged union, thus recognizing said union as representing the employees of the said hotels, and in this fashion, to enable the said union to procure membership among the employees of said hotels. Said Herman threatened Mr. Cohen by stating that unless the Hotel Association actively enlisted the hotel owners to join with the said union by giving it contracts as aforesaid, that the said David Herman would, through economic sanction such as picket lines around said hotels, cause them great economic loss, and thus force them, through such economic loss and pressure, to give to the said union contracts covering the employees in said hotels, who were not, in fact, members of or represented by the said alleged union in any fashion whatsoever. The Miami Beach Hotel Owners Association, and its president, had no power or authority to represent the owners of the individual hotels in reference to any labor matters involving the owners of any partic-
[fol. 5] ular hotel.

5) The plaintiff has had no dealings whatsoever with any members of the Hotel Employees Union, Local No. 255, A. F. of L. Said union has never sought to negotiate with the plaintiff as a representative of plaintiff's employees; in fact, said union does not represent the vast majority of the plaintiff's employees. No labor controversy or negotiations with reference to any labor dispute has ever been instituted, inaugurated, or carried on between the plaintiff and the said alleged union, and the said union has never sought to bargain with the plaintiff save and except as hereinafter alleged as the alleged representative of plaintiff's employees, and plaintiff alleges that the said union has never been authorized by the vast majority of its employees to represent them.

6) The plaintiff has never refused to recognize the defendant union, and has never refused to negotiate with said union; the plaintiff has never been requested by said union

to negotiate with it and has never been advised by the said union that the union is the bargaining agent for plaintiff's employees, nor has the plaintiff been advised by the said union that it is the labor organization representing plaintiff's employees, save and except that sometime in the beginning of May, 1955, Robert Gocke, manager of the Nautilus Hotel, received a phone call from one purporting to be the aforementioned Herman, who told Gocke that that union wanted to discuss the position of the man- [fol. 6] agement of the Nautilus Hotel relative to current labor conditions. The said manager advised the caller that Marion E. Sibley was authorized to represent and speak for the hotel in any such discussions, and that Herman should contact Marion E. Sibley. Herman thereupon stated that he would not under any conditions meet with Sibley or enter discussion with him. The next day the same caller phoned Gocke and was again advised to contact Sibley who represented management and ownership of the Nautilus Hotel. The caller again refused, reiterating his refusal to meet with Sibley.

No further communication was ever received from the defendant union or any of its representatives until Friday evening, June 3, 1955 at about 7 p.m. At that time, a man representing himself as a spokesman for the union accosted the manager of the Nautilus Hotel and told him that the hotel was going to be picketed within two minutes "on advice of counsel." No other communication has ever been had from the defendant union.

In truth and in fact, no demand or grievance of any nature, character or description whatsoever of the plaintiff's employees has, up to the present time, been made of or placed before the plaintiff, its officers or agents. Notwithstanding, said defendant union, at 7:05 o'clock in the evening, on Friday, June 3, 1955, placed a picket line consisting of five (5) or more pickets at the plaintiff's hotel and place of business, and said pickets have seized and are occupying the property and premises of the plaintiff unlawfully and contrary to the laws of the State of Florida. [fol. 7] And each of said pickets in said picket line carries and displays placards and posters which falsely and fraudulently seek to mislead and misinform the public and plain-

tiff's employees of the plaintiff's position. Each of said placards carries the following statement:

> "This hotel is non-union. Please patronize a union hotel. Hotel Employees Union, Local #255, 1575 Washington Avenue, Miami Beach, American Federation of Labor."

Said statements are made for the purpose of deceiving the public. Said statements are made to divert normal business from the hotel and cause strife and dissension among plaintiff's employees. The picket line was placed around the plaintiff's place of business for an unlawful and illegal purpose in that the defendant union is carrying out its threat made to the President of the Miami Beach Hotel Owners Association by placing economic pressure on the plaintiff, thereby seeking to cause the plaintiff, by loss of revenue thus occasioned, to execute a labor contract with the said union. This conduct of the said defendant union is unlawful and is contrary to the Constitution and the laws of the State of Florida, in that the said defendant union has never been certified to the plaintiff as the lawful bargaining agent of the plaintiff's employees, and said union has never approached the plaintiff seeking to bargain with the plaintiff as the authorized bargaining agent of the plaintiff's employees, and in that no demand for collective bargaining has even been made by said anion [fol. 8] upon the plaintiff. Thus, the defendant union, through its unlawful conduct, seeks to force the plaintiff to execute a contract with it in order that said union might utilize such contract to coerce and force plaintiff's employees to become members of said union.

7) On the evening of June 3, 1955, the defendants and their henchmen, congregated at plaintiff's place of business in large numbers, and as a majority of plaintiff's loyal employees arrived for work, each was accosted by the group and urged to join the defendant union. Some of the employees were threatened if they did not join, and many of them were intimidated by the defendants and their associates, agents and servants. As a matter of fact, the pickets have used physical force and violence upon some of

the employees who refused to join, and a number of employees have received innumerable anonymous telephone calls of threats of all manner of bodily harm and injury to their person, should they fail to join defendant union.

8) The defendant union is maintaining the picket line around the premises owned and operated by the plaintiff, and said picketing is unlawful and in violation of Paragraph 13, 447.09, Florida Statutes, in that said union maintains more than five pickets in the space surrounding the plaintiff's place of business. Said pickets have not engaged in peaceful or reasonable picketing, and the same has become unlawful in that the pickets maintaining the picket line are attempting to stop patrons of plaintiff's [fol. 9] hotel from entering or leaving the premises, and are using abusive and obscene language, and are harassing and threatening the plaintiff's patrons and guests. The picketing is unlawful in that through it the defendant union seeks to force plaintiff into signing a contract with the union although plaintiff may not legally sign such a contract since the defendant union is not the authorized bargaining agent for plaintiff's employees.

9) The said union, through false and misleading picket banners, attempts to induce guests and patrons of the plaintiff's hotel to leave, and through such fraudulent misrepresentations, defendants seek to destroy the plaintiff's business and injure the plaintiff in the operation of its business. By reason of the unlawful conduct on the part of the defendants, members of the public are being deterred and stopped from patronizing the plaintiff's place of business, which is causing plaintiff irreparable loss and damage. There is no method or means by which the exact loss may be determined and there is no method or means of determining the full damage caused by such false and [fol. 10] fraudulent conduct of the said defendant union.

10) The defendant union and its representatives, threw up its picket line without notice or opportunity for the plaintiff to present its cause to the court to determine the right of the union to cause plaintiff the damage it is presently suffering. The plaintiff is entitled to restoration of

status quo ante by temporary injunction until such time as the court may have the opportunity to declare and determine whether or not the defendant union is entitled to engage upon the conduct which is aimed at destroying the plaintiff's business and utilizing in furtherance thereof the unlawful means aforesaid.

Forasmuch, Therefore, as plaintiff is without remedy in the premises, save and except in a Court of Equity, and to the end that justice may be done, plaintiff prays:

(a) That this Court temporarily enjoin and restrain the defendant union forthwith from maintaining said pickets or picket line at the plaintiff's place of business, and that the Court restore to plaintiff its status quo ante, pending a determination of the right of the defendant union to picket the plaintiff's business.

(b) That this Court temporarily enjoin and restrain the defendant union, and its agents, officers, representatives, servants and employees, including the defendants, Albert H. Berlin, Clarence L. Smith and Henry Mischel, from [fol. 11] picketing or causing to be picketed or aiding and abetting in the picketing or authorizing the picketing of plaintiff's place of business, or of advertising or publishing any false and scandalous statements in reference to the plaintiff's business, or their officers, agents, representatives and employees, or by any act or method of boycotting or injuring the same, either by picketing or otherwise.

(c) That this Court make such injunctions permanent upon final hearing.

(d) That this Court grant such other and further relief as to it may seem meet and proper.

Nautilus Hotel, By: (s) Robert Gocke, General Manager.

Sibley & Davis, 605 Lincoln Road, Miami Beach, Florida, Attorneys for Plaintiff, By: (s) Milton E. Grusmark, Of counsel.

Duly sworn to by Robert Gocke, jurat omitted in printing.

[fol. 13] Certificate of service (omitted in printing).

[fol. 14]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,268-D

[Title omitted]

AFFIDAVIT OF ROBERT P. GOCKE ON BEHALF OF PLAINTIFF—Filed June 14, 1955

STATE OF FLORIDA,
COUNTY OF DADE, *ss.*:

Before Me, the undersigned authority, personally appeared Robert P. Gocke, general manager of the Nautilus Hotel, which hotel is operated by the A. H. S. Corporation, a Florida corporation, who first by me being duly sworn, deposes and says:

1) That at the beginning of May, 1955, affiant received a phone call from one purporting to be Dave Herman, who told affiant that he represented Local No. 255, Hotel Employees Union, A. F. of L., and that said union wanted to discuss the position of the management of the Nautilus Hotel relative to current labor conditions. Affiant advised the caller that Marion E. Sibley had been authorized to represent and speak for the hotel in any such discussions and that Herman should contact Marion E. Sibley in order to arrange a meeting. The caller thereupon stated that [fol. 15] regardless of the desire of the hotel as to its representative, he would not meet with Sibley or enter into any discussion with him concerning the Nautilus Hotel.

2) The following day the same caller telephoned affiant at his place of business in the Nautilus Hotel and repeated his desire to discuss the labor situation with the management. Affiant again advised the caller that Sibley was authorized and empowered to speak for the hotel and that no conversation would be held with the union by anyone else on behalf of management. The caller again refused, reiterating his refusal to meet with Sibley or discuss the situation with him.

3) About two or three days thereafter, a phone call was received by affiant from another person purporting to represent Local No. 255, but also unknown to affiant, who stated that an employee had been discharged for union activities. Since no employee had been fired for union activities, affiant denied the charge to the caller and again stated that the position of the hotel concerning any discussions with Local No. 255 was that such discussion should be held with Marion E. Sibley, the authorized representative for the Nautilus Hotel.

4) On or about two or three days after the phone call referred to in Paragraph 3, two persons unknown to affiant spoke with him on the premises of the Nautilus Hotel concerning an alleged discharge of an employee for union activities. The employee involved was not an employee of the Nautilus Hotel but an employee of the catering department, which department is independently run under a lease agreement with the plaintiff corporation. [fol. 16] Plaintiff corporation has no control over hiring or firing of said employees in the catering department. Affiant referred the two callers to the manager of the restaurant and no further discussion was held concerning said employee.

5) No further communication was ever received from Local No. 255 or anyone purporting to represent it until Friday evening, June 3, 1955, at about 7:00 P. M. At that time a man representing himself as a spokesman for the union accosted affiant on the premises of the hotel and told him that the hotel would be picketed within two minutes on advice of counsel and because of affiant's refusal to negotiate with Local No. 255. Immediately thereafter, pickets were thrown up around the Nautilus Hotel.

6) On about 9:00 o'clock in the evening on Sunday, June 5, 1955, the picket line around the Nautilus Hotel was removed. At about 11:00 o'clock of the same evening, without communication or notification of any sort, the picket line was again thrown up around the hotel. On June 6th, at about 2:00 A. M., the picket line was removed. At about 6:00 A. M. of the same morning, June 6, 1955, a group of pickets gathered across the street from the

Nautilus Hotel and remained there without actually picketing the hotel until approximately 7:00 o'clock in the morning, at which time they left by truck.

7) Neither Local No. 255 nor any of its agents, employees or officers, has ever established or attempted to establish, to affiant that said union is authorized to represent the employees or any of the employees of the Nautilus Hotel. The union has never charged that the employees [fol. 17] of the hotel had any grievances that needed correction.

/s/ Robert P. Gocke

Sworn and subscribed to before me this 14th day of June, A. D. 1955.

/s/ Katherine B. Sheridan, Notary Public, State of Florida at Large

My commission expires: Nov. 1, 1955

(Seal)

[fol. 18]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,268-D

[Title omitted]

AMENDMENT TO BILL OF COMPLAINT FOR INJUNCTION AND OTHER RELIEF—Filed June 14, 1955

Comes Now the Plaintiff by its undersigned attorneys and files this its Amendment to its Bill of Complaint for Injunction and Other Relief as a matter of course before a responsive pleading is served and for such Amendment to Bill of Complaint says:

Since the filing of the Complaint in this cause, Defendants have further harassed Plaintiff by causing the picket line thrown around the Nautilus Hotel to be removed and then placed around the hotel without notification or reason.

On about 9:00 o'clock in the evening on Sunday, June 5th, 1955, the picket line around the Nautilus Hotel was

removed. At about 11:00 o'clock of the same evening, without communication or notification of any sort, the picket line was again thrown up around the hotel. On June 6th, at about 2:00 A.M., the picket line was removed. At about 6:00 A.M. of the same morning, June 6th, 1955, a group of pickets gathered across the street from the Nautilus Hotel and remained there without actually picketing the hotel until approximately 7:00 o'clock in the morning, at which time they left by truck.

There is reasonable probability to believe that such conduct on the part of the Defendants will continue and the [fol. 19] threat of such recurrence of picketing has caused and will continue to cause disruption and fear among Plaintiff's employees unless such threat is prevented by the issuance of an injunction.

Nautilus Hotel, By /s/ Robert Gocke, General Manager.

Sibley & Davis, 605 Lincoln Road, Miami Beach, Florida, Attorneys for Plaintiff, By /s/ Milton E. Grusmark, of counsel.

Duly sworn to by Robert Gocke, jurat omitted in printing.

Proof of service (omitted in printing).

[fol. 20]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,268-D

[Title omitted]

ANSWER AND AFFIDAVIT—Filed June 16, 1955

Come Now defendants and make this their Answer to the Complaint and Amendment to the Bill of Complaint and answering say:

1. They deny each and every of the material allegations contained in the entire Complaint and Amendment thereto, save that David Herman and other representatives of defendant union did on various occasions contact the plain-

tiff and its representatives for the purpose of advising the plaintiff that defendant union did represent employees of the plaintiff and was the duly designated collective bargaining representative of such employees and that said defendant union attempted to negotiate with the plaintiff concerning recognition and other labor management relations.

2. Defendants deny that the picketing commenced "on the advice of counsel".

3. Defendants aver that the matters and things set forth in the Complaint and Amendment thereto are moot, for that there is no picketing, nor has there been any picketing for a period since June 5th and defendant does not contemplate nor intend to picket the said premises under present existing circumstances unless and until some new situation arises.

Gramling & Gramling, J. W. Brown, Ben Gettler, Solicitors for Defendants, By Carrington Gramling, 224 Shoreland Building, Miami, Florida.

[fol. 21] *Duly sworn to by Clarence L. Smith, jurat omitted in printing.*

Certificate of service (omitted in printing).

[fol. 22]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180268.

A. H. S. CORPORATION, a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), et al., Defendants.

PRELIMINARY INJUNCTION—June 17, 1955

This cause came on to be heard before me on plaintiff's application for preliminary injunction, and the Court con-

sidered the bill and supporting affidavits and answer of defendants submitted in opposition to the application.

The plaintiff charged, among other things, that the defendant union had picketed the plaintiff's hotel for failure of the plaintiff to negotiate or deal with the union, as a representative of the plaintiff's employees, and that such picketing was unlawful and should be enjoined, in that there was no labor dispute and there had been no refusal to negotiate with the proper representative, but that the defendant union and its agents had failed to furnish any satisfactory proof or evidence of their having been chosen by a majority of the employees to act as their representative or bargaining agent. There were supporting affidavits on plaintiff's bill on these points.

Defendants answered, contending for but making no sufficient showing of a right to represent the employees, and defendants answered that the question was moot and there should be no injunction because there was no longer any picketing and disclaimed any intention to resume picketing.

It appears the picketing commenced at this hotel on June 3, 1955. On Saturday, June 4th, the plaintiff caused the present bill for injunction to be prepared and a copy of it was served on defendant or defendant's counsel late on the day of June 4th; that the picketing continued until sometime on June 5th, when it was stopped, but resumed [fol. 23] again later on June 5th and continued until 2:00 A.M., of Monday, June 6th, since which it has not again been resumed.

I find that the picketing was unlawful, as determined by the Supreme Court in the recent case of Sax Enterprises, Inc. against this same defendant union by an opinion and judgment of that Court dated May 27, 1955. Because of the failure to establish the representation as indicated above it follows that the picketing was unlawful, at the time it was in progress and at the time the defendant union received notice of the proceeding or intention to proceed for an injunction against the picketing.

I further find that the subsequent termination of the picketing does not render the matter moot and does not preclude the entry of an injunction. On this point this

Court called for authorities from the parties, and plaintiff has furnished ample authorities to that effect, including the following:

United States v. W. T. Grant Co., 345 U.S. 629, 97 L. Ed. 1301, 73 S. Ct. 894.
Henry Shore v. Building & Construction Trades Council, 173 Fed. (2nd) 678.
Peters v. Southern Bell Tel. & Tel. Co., et al., 70 So. (2nd) 547.
Jones v. Securities and Exchange Commission, 288 U.S. 1, 56 S. Ct. 654, 80 L. Ed. 1015.
United States v. Oregon State Medical Society, et al., 343 U.S. 326, 72 S. Ct. 690, 96 L. Ed. 978.
Securities and Exchange Commission v. Torr, 87 Fed. (2nd) 446, 449.
Bowling v. National Convoy & Trucking Co., 135 So. 541.
See High on Injunctions, Vol. 1, p. 9.

Whereupon, It Is Ordered that the defendants and each of them, their officers, agents, servants, employees and attorneys, be and they and each of them hereby are enjoined and restrained until further order of this Court from picketing the hotel premises involved in this suit.

The plaintiff shall file herein an injunction bond, payable to the defendants in the principal amount of $2000.00, with good and sufficient surety to be approved by the Clerk of this Court, and conditioned as required by law, to pay all costs, damages and expenses which may be suffered by [fol. 24] defendants by reason of the issuing of said injunction, if the injunction shall be dissolved or if the bill upon which it was granted be dismissed.

Done and Ordered, in Chambers, at Miami, Florida, this 17 day of June, 1955.

Charles A. Carroll, Circuit Judge.

[fol. 25]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY No. 180,268-D

[Title omitted]

STIPULATION RE: FINAL HEARING—Filed November 30, 1955

It Is Stipulated by and between counsel for the respective parties that all testimony and other evidence heretofore introduced in this cause be and the same is hereby reaffirmed for the purpose of final hearing, with the single addition however, that at said Final Hearing, the defendants would produce Clarence Smith as a witness, who would testify according to affidavit attached hereto, and it is

Stipulated that said testimony would be objected to on the grounds that said testimony is immaterial and irrelevant; and it is

Stipulated that this testimony and the objections thereto be submitted to the Chancellor for ruling thereon, and in the event the objection is sustained, the affidavit shall remain as part of the record as a proffer, and all objections as to form of such proffer be and they are hereby waived.

It Is Further stipulated that Final Decree be entered by the Chancellor upon the record as now made in the light of this Stipulation.

[fol. 26] Witness our hands at Miami, Dade County, Florida, this 30 day of November, 1955.

Sibley & Davis, Attorneys for Plaintiff, By /s/ Marion Sibley.

J. W. Brown & Framling (sic) & Gramling, Attorneys for Defendants, By Carrington Gramling.

[fol. 27] No. 180,268-D

AFFIDAVIT OF CLARENCE SMITH FOR DEFENDANTS

STATE OF FLORIDA,
COUNTY OF DADE, *ss.*:

Personally appeared before me the undersigned authority Clarence Smith, who being by me first duly sworn deposes and says as follows:

"My name is Clarence Smith, and I am Business Agent of Hotel Employees Union, Local 255. That plaintiffs, in the operation of their hotel are engaged in a business which affects interstate commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida, and from various countries outside of the United States by various interstate and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state bus lines, inter-state and inter-national steamship companies, and by passenger automobiles. Said business further is part of "package deal" arrangements with said various [fol. 28] inter-state and international airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Transworld Airlines, National Airlines, and many others; various interstate and international steamship companies, including Peninsular and Occidental Steamship Companies, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coastline Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus lines companies including Greyhound Bus Lines Company, Trailways Bus System and various other inter-state bus line companies. Said "package deals" arrangements are arangements (sic) whereby persons in states other than the

State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by Plaintiffs and said inter-state carriers. All expense incurred in promoting, making and consummating said inter-state and inter-national sales are jointly shared by Plaintiffs, and said inter-state and international carriers. The proceeds of said inter-state and inter-national sales are divided between Plaintiff, as operator of said hotel and said inter-state and inter-national carriers; said sales of Plaintiff in inter-state commerce exceed in volume amount sufficient to establish jurisdiction of National Labor Relations Board under its rules and regulations.

Said plaintiff, as a part of the operation of said hotel, purchases numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the state of Florida. [fol. 29] Said plaintiff, as a part of the operation of said hotel, sells directly outside of the State of Florida and within the State of Florida for carriage or resale outside of the State of Florida. Said plaintiff as part of the operation of said hotel, advertises the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the states of the United States outside the State of Florida and in various countries outside of the United States.

Further affiant sayeth not.

/s/ Clarence Smith

Sworn to and subscribed before me this 15th day of November, 1955.

/s/ Sylvia R. Lathero, Notary Public State of Florida at Large

My commission expires: Aug. 20, 1959

(Seal)

[fol. 30]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,268

A. H. S. CORPORATION, a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

FINAL DECREE—November 30, 1955

This Cause coming on to be heard upon final hearing pursuant to the Stipulation of the parties to this cause, and it appearing to the Court that the defendants proffered the affidavit of Clarence Smith as evidence upon this final hearing, and plaintiff objected to said affidavit on the ground that the same is immaterial and irrelevant, and the Court sustains the objection thereto upon said grounds. The Court having considered the entire record in this cause, including the testimony taken before the Court, and the Court being fully advised in the premises,

It Is Thereupon Ordered, Adjudged and Decreed that the preliminary injunction heretofore rendered against the defendants, and each of them, which injunction is recorded in Chancery Order Book 1189, at Page 550, in the records of the Clerk of the Circuit Court of Dade County, Florida, be and the same is hereby made permanent. The injunc-[fol. 31] tion bond filed herein is hereby cancelled and the principal and surety released of all liability thereunder. The costs of this cause hereby assessed in the sum of $354.66 are taxed against the defendants, for which let execution issue.

Done and Ordered in Chambers at Miami, Florida, this 30 day of November, 1955.

/s/ Charles A. Carroll, Circuit Judge.

[fol. 32]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180,268-D

[Title omitted]

NOTICE OF APPEAL—Filed January 4, 1956

The defendants, Hotel Employees Union, Local No. 255, et al, take and enter their appeal to the Supreme Court of Florida to review the order, judgment or decree of the Circuit Court for Dade County, bearing date the 30 day of November, 1955, entered in the above styled cause and recorded in the records of said Court in Book 1214, Page 206, and all parties to said cause are called upon to take notice of the entry of this appeal.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By Carrington Gramling.

[fol. 33]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY NO. 180,268

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 13, 1956

Come now the defendants by their undersigned solicitors and make the following assignments of error as the errors which they intend to rely upon in the Supreme Court of Florida, for a reversal of the Order (or Final Decree) made herein on the 30th day of November, 1955, and recorded in Chancery Order Book 1214, page 206 of the records of this Court, from which they have appealed:

1. The Court erred in enjoining the defendants in peaceful picketing the business place of the complainant, whereby your defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly, and the right to work or refrain from working as guaranteed within the meaning and scope of Sections 1, XII, XIII, XVII and

XIX, Declaration of Rights, Constitution of the State of Florida, and Amendments I, V, XIII and XIV of the Constitution of the United States of America.

2. The Court erred in enjoining picketing when there was no picketing and none threatened, thereby imposing prior retraint (sic) upon a peaceful future lawful picketing, and thus depriving the members of defendant union of the constitutional guarantees of Amendments I, V, XIV and XV of the Constitution of the United States of America.

[fol. 34] 3. The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred (in and by said final decree) in assessing costs against the defendants.

J. W. Brown, Gramling and Gramling, Solicitors for Defendants, By Carrington Gramling.

[fol. 37] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 39]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957—DIVISION B.

Case No. 28,243

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), et al., Appellants,

v.

A. H. S. CORPORATION, a Florida corporation, Appellee.

An Appeal from the Circuit Court for Dade County, Charles A. Carroll, Judge.

J. W. Brown and Gramling & Gramling, for Appellants.

Sibley & Davis and Thomas H. Barkdull, Jr., for Appellee.

OPINION, PER CURIAM—Filed March 15, 1957

Affirmed on authority of Fontainebleau Hotel Corp. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., opinion filed February 1, 1957.

Terrell, C.J., Hobson, Drew and O'Connell, JJ., Concur.
[fol. 41]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957—DIVISION B.

Case No. 28,243

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

A. H. S. CORPORATION, a Florida corporation, Appellee.

JUDGMENT—March 15, 1957

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellees do have and recover of and from the Appellants their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

[fol. 50] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. A] IN THE SUPREME COURT OF FLORIDA

Case No. 28,255

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. OF L.), et al., Appellants,

v.

HOTEL DELMONICO, INC., a Florida corporation, Appellee.

Transcript of Record—Filed April 5, 1956

J. W. Brown and Gramling & Gramling, 226 Shoreland Building, Miami, Florida, Attorneys for Appellants.

Sibley & Davis, Thomas H. Barkdull, Jr., 605 Lincoln Road, Miami Beach, Florida, Attorneys for Appellee.

[fol. 1]
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180374

HOTEL DELMONICO, I. c., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

COMPLAINT FOR INJUNCTION AND OTHER RELIEF—
Filed June 9, 1955

The plaintiff, Hotel Delmonico, Inc., a Florida corporation, files its complaint for injunction and other relief against the defendants, Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith

and Henry Mischel, as Business Agents and Officers thereof, and alleges:

1) The plaintiff is a corporation created and existing under the laws of Florida, with its principal place of business located in Miami Beach, Dade County, Florida. The defendant, Hotel Employees Union, Local No. 255 (A. F. of L.), is a labor organization within the intent and purview of the laws of the State of Florida, and the defendants, Albert H. Berlin, Clarence L. Smith and Henry Mischel, are each residents of Dade County, Florida, and are each over the age of twenty-one years; that said individual defendants and each of them are the duly authorized business agents and officers of said labor organization.

[fol. 2] 2) Plaintiff is the operator of an ocean-front hotel consisting of approximately 150 rooms, located at 6393 Collins Avenue, Miami Beach, Florida, and known as the Delmonico Hotel. This hotel was constructed approximately six years ago, and is worth today $1,500,000.00. Plaintiff operates in connection therewith a cocktail lounge, dining room, coffee shop, swimming pool and other various facilities usual or necessary in the operation of a first-class hotel. Plaintiff's hotel has enjoyed the very finest reputation, and it has earned an excellent and valuable good will. The plaintiff's hotel business is lucrative and has an enviable nation-wide reputation. It caters to the public by maintaining a dignified atmosphere, serving only the highest grades of foods and beverages, and by rendering superlative service to its patrons and guests.

3) Employed at plaintiff's hotel are approximately 65 persons, who perform services as cooks, waiters, bell boys, maids, elevator operators, and other similar duties normally required to operate and maintain a first-class hotel. The plaintiff has had no labor dispute with its employees in regard to wages, working conditions or any other phase of employer-employee labor relationship existing between the plaintiff and its employees. The plaintiff has enjoyed the most cordial labor relations with its employees, and has at all times afforded to its employees a satisfactory standard of pay and working conditions. Plaintiff has received no complaints from its employees in reference to wages, hours,

or working conditions, and is wholly unaware of any labor dispute of any nature, character or description existing between it and its employees.

[fol. 3] 4) Plaintiff believes and is informed that sometime early in 1955, an international union determined to invade the hotel industry of Miami Beach, with the purpose in mind of creating for themselves a lucrative labor organization by which said international union could reap a harvest of money from the employees of the hotels in Miami Beach through dues which the said union expected to charge said employees in the event they could inveigle said employees to join in creating a labor union, which has been named Hotel Employees Union, Local No. 255, A. F. of L. Said international union caused a professional organizer to be sent to this area.

Since said time, the organizer, who is one David Herman, and one of the defendants, Albert H. Berlin, have utilized all the pressure tactics known to labor organizers to force and intimidate the employees of the plaintiff to become members of said labor organization. Their efforts in enlisting membership has been a distinct failure, so the said professionals determined to place pressure, intimidation and threats upon the hotel owners, in order to force said hotel owners through economic sanctions, to sign contracts with the alleged organization, and thus use said contracts as a basis to force the employees of the hotels to become members of said alleged union.

5) The plaintiff has had no dealings whatever with any members of the Hotel Employees Union, Local No. 255, A. F. of L. Said union has never sought to negotiate with the plaintiff as the representative of plaintiff's employees; in fact, Local No. 255 does not represent the vast majority of the plaintiff's employees. No labor controversy or negotiations in reference to any labor dispute has ever been instituted, inaugurated, or carried on between the plaintiff and the said alleged union, and the said union has never [fol. 4] sought to bargain with the plaintiff as the alleged representative of plaintiff's employees, save and except that the said Herman sent a wire to the plaintiff on April 20, 1955, requesting a conference and subsequently called

the offices of the plaintiff and asked, "Are you ready to sign?" The union never established that it represented the plaintiff's employees, and never made any specific demands upon plaintiff to improve its employees working conditions, and plaintiff alleges that the said union has never been authorized by the vast majority of its employees to represent them, and to the contrary, the plaintiff's employees have notified it that they do not desire the union to represent them.

6) The plaintiff has never refused to recognize the defendant union, and has never refused to negotiate with said union; and has never been advised by the said union that the union is the bargaining agent for plaintiff's employees, nor has the plaintiff been advised by said union that it is the labor organization representing plaintiff's employees, nor has it been advised by its employees that the union is their representative. In truth and in fact, no demand or grievance of any nature whatsoever of the plaintiff's employees has, up to the present time, been made of or placed before the plaintiff, its officers or agents.

Notwithstanding, said union, at 5:30 o'clock in the afternoon, on Friday, May 27, 1955, placed a picket line consisting of six or more pickets in front of the plaintiff's place of business, and each of said pickets in said line carried a placard or poster which falsely and fraudulently alleged the following:

> "This Hotel Refuses to aid in determing (sic) its Employees' Bargaining Agent Join the Hotel Employees Union Local 255 American Federation of Labor 1575 **Washington Ave., Miami Beach**"

[fol. 5] Such representation made by said union is false and untrue, and the said union knows that the said statements are false and untrue. The plaintiff is under no duty to aid its employees in selecting a bargaining agent, and to do so would amount to an unlawful act under the laws of this State. Said statements are made for the purpose of deceiving the public. The picket line was placed around the plaintiff's place of business for an unlawful and illegal purpose in that the defendant union, by placing economic

pressure on the plaintiff, is seeking to cause the plaintiff, by loss of revenue thus occasioned, to execute a labor contract with the said union, and to engage in activities contrary to the laws of this State. This conduct of the said defendant union is unlawful, and is contrary to the Constitution and the Laws of the State of Florida, in that the said defendant union has never been certified to the plaintiff as the lawful bargaining agent of the plaintiff's employees, and said union has never approached the plaintiff seeking to bargain with the plaintiff as the authorized bargaining agent of the plaintiff's employees, and in that no lawful demand for collective bargaining has been made by said union upon the plaintiff.

Thus, the defendant union, through its unlawful conduct, seeks to force the plaintiff to execute a contract with it and seeks to have the plaintiff engage in unlawful acts in order that said union might use the said contract to coerce and force plaintiff's employees to become members of said union.

7) There is no dispute between the plaintiff and its employees, no demand has been made on the plaintiff, and there is no basis for a lawful strike.

8) The defendant union is maintaining the picket line around the premises operated by the plaintiff. Said picket-[fol. 6] ing is unlawful and is in violation of Section 447.09, sub-section 13, Florida Statutes, in that the said union maintains more than six pickets in the short space surrounding the plaintiff's place of business. Said pickets have not engaged in peaceful or reasonable picketing, and the same has become unlawful in that the pickets maintaining the picket line are attempting to stop patrons of plaintiff's hotel from entering or leaving the premises, and are using abusive and obscene language, and are harassing and threatening the plaintiff's patrons and guests.

9) The picket banners carried by said pickets make false, unlawful, and fraudulent statements, in that said banners charge that plaintiff refused to engage in unlawful acts, although the said union knows the statements to be untrue and false. Thus, the said union, through false and mis-

leading picket banners, attempts to induce guests and patrons of the plaintiff's hotel to leave, and through such fraudulent misrepresentations, defendants seek to destroy the plaintiff's business and injure the plaintiff in the operation of its business.

10) By reason of the unlawful conduct of the defendants, members of the public are being deterred and stopped from patronizing the plaintiff's place of business, which is causing plaintiff irreparable loss and damage. There is no method or means by which the exact loss may be determined and there is no method or means of determining the full damage caused by such false and fraudulent conduct of the said defendant union.

11) The defendant union, and its representatives, threw up its picket line without notice or opportunity for the plaintiff to present its cause to the Court to determine the right of the union to cause plaintiff the damage it is presently suffering. Plaintiff is entitled to restoration of [fol. 7] status quo ante by temporary injunction until such time as the Court may declare and determine whether or not the union is entitled to engage upon the said conduct, which is aimed at destroying the plaintiff's business.

Forasmuch, Therefore, as plaintiff is without remedy in the premises, save and except in a Court of Equity, and to the end that justice may be done, plaintiff prays:

a) That this Court temporarily enjoin and restrain the defendant union forthwith from maintaining said pickets or picket line at the plaintiff's place of business, and that the Court restore to plaintiff its status quo ante, pending a determination of the right of the defendant union to picket the plaintiff's business.

b) That this Court temporarily enjoin and restrain the defendant union, and its agents, officers, representatives, servants and employees, including the defendants, Albert H. Berlin, Clarence L. Smith and Henry Mischel, from picketing or causing to be picketed or aiding and abetting in the picketing or authorizing the picketing of plaintiff's place of business, or of advertising or publishing any false and scandalous statements in reference to the plaintiff's

business, or the plaintiff corporation, or its officers, agents, representatives and employees, or by any act or method of boycotting or injuring the same, either by picketing or otherwise.

c) That this Court make such injunctions permanent upon final hearing.

d) That this Court grant such other and further relief [fol. 8] as to it may seem meet and proper.

Hotel Delmonico, Inc., a Florida corporation. By /s/ Joe Cole, General Manager.

Sibley & Davis, 605 Lincoln Road, Miami Beach, Florida, Attorneys for Plaintiff. By: /s/ Thomas H. Barkdull, Jr., Of Counsel.

Duly sworn to by Joe Cole, jurat omitted in printing.

[fol. 9]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY No. 180374

[Title omitted]

ANSWER—Filed before me this 15th day of June, 1955 Vincent C. Giblin, Circuit judge

Come now the defendants and make this their Answer to the complaint and answering, say:

1. That they admit the identify of the parties hereto as alleged in Paragraph 1.

2. That they are without knowledge as to the matters and things set forth in Paragraph 2, but aver that if the said hotel enjoys a fine reputation and valuable good will that such asset has been created in large measure by the excellence of performance by the many employees of said hotel while said employees are yet not recognized by the plaintiff through their duly designated representative of their own choosing, to-wit: Hotel Employees' Union Local

No. 255; and that the purpose of this instant litigation is to deprive the said employees who have contributed so richly to the success of plaintiff hotel of their constitutional and statutory guarantees of being represented for collective bargaining purposes by representatives of their own choosing.

[fol. 10] 3. Defendants admit that the said hotel employs many people as cooks, waiters, bell boys, maids, elevator operators and other similar duties normally required to operate and maintain a hotel, but deny the remaining allegations of Paragraph 3 of the complaint and aver that the employees of plaintiff's hotel have long been dissatisfied with their wages, working conditions and other phases of the employer-employee labor relationship and aver that plaintiff has suffered a large turn-over in the employees because of a sub-standard rate of pay, working conditions, adjustment of grievances and other interrelated factors; and would aver that the many complaints on the part of the employees have been properly brought to the representatives of their own choosing as guaranteed by law, to-wit: Hotel Employees' Union Local No. 255, A. F. of L.; but that plaintiff hotel has at all times refused to negotiate or settle the many differences and grievances existing and under which the employees are now suffering.

4. Defendants deny each and every of the material allegations of Paragraph 4 and aver that a large majority of the "service" employees, as described in Paragraph 3 of the complaint, have designated Hotel Employees' Union Local No. 255 as their lawfully constituted representative pursuant to F. S. A. 447.03, and the defendants deny that they seek any contract with plaintiff that would force non-member employees to become members of this union, for that this union attempts to represent only those employees who have designated this union as their bargaining agent, pursuant to the laws of the State of Florida.

5. Defendants deny each and every of the material allegations of Paragraph 5 and would aver that these de-[fol. 11] fendants have long sought a conference with plaintiff whereby these defendants could, by reasonable and responsible methods or evidence, establish to the satis-

faction of plaintiff as a fair, reasonable and prudent employer, the fact that the defendant-union has been designated as the lawful bargaining representative by a large portion of its employees, in fact an overwhelming majority thereof, but plaintiff failed and refused to grant a conference whereby the lawful representation of your defendant-union could be established as aforesaid, whereby and whereupon it became impossible for defendant-union to establish to the employer the bona fides of its claim, but your defendant-union proffers unto this Honorable Court conclusive proof of the aforesaid allegations. The plaintiff is well informed as to the desire of the defendant-union to negotiate a contract concerning wages, hours and working conditions on behalf of the employees of plaintiff who are members of the Union, but no such contract could be discussed for that the plaintiff failed and refused to grant audience to the defendant-union for any purpose whatsoever; and your defendants aver that the picketing is for the purpose of inducing the plaintiff to confer as to representation which, when established, would then make possible the negotiation of a contract, as aforesaid; that the purpose of the picketing is adequately expressed on the banners carried by the pickets which advises management and the public:

> "This hotel refuses to aid in determining its employees' bargaining agent,"

which said allegation is true and correct, and it is apparent from the complaint that the plaintiff had 37 days in which to determine whether it would deal with the union as the representative of plaintiff's member-employees; and it is [fol. 12] apparent from the complaint, and it is also true and correct, that plaintiff failed and refused to meet with the union, contrary to the laws of the State of Florida granting the right of employees to designate their bargaining agent and granting the right of collective bargaining, which imposes upon the employer the duty of meeting and recognizing the lawfully designated agent of its employees.

6. Answering Paragraph 6 of the complaint, your defendants deny each and every material allegation thereof

excepting the fact of the picketing, and would re-aver the matters and things set forth in Paragraph 5 of this Answer.

7. Answering Paragraph 7 of the complaint, your defendants deny that there is no dispute between the plaintiff and its employees, and deny that no demand has been made on the plaintiff, and deny that there is no basis for a lawful strike.

8. Defendants deny each and every of the material allegations of Paragraph 8.

9. Answering Paragraph 9 of the complaint, defendants deny the banners make false, unlawful and fraudulent statements and aver to the contrary, that the statements of said banners are true and correct.

10. Your defendants deny the material allegations of Paragraph 10, but aver that if plaintiff is being damaged by the picketing, it is as a result of the unlawful conduct of the plaintiff in refusing to confer with or to have any dealings whatsoever with the lawfully designated agent of the employees of plaintiff.

11. Defendants are without knowledge of any law of the State of Florida, or otherwise, which would require notice or opportunity for the plaintiff to present its cause to the [fol. 13] Court prior to any picketing, and is without knowledge of any law that requires a declaratory judgment as a condition precedent to picketing which is conducted for the purpose of inducing the employer to deal with the representative of plaintiff's employees.

12. And your defendants would show that the plaintiff seeks to maintain this litigation in a court of equity and good conscience with unclean hands, for that the plaintiff has denied to its many employees the statutory and constitutional guarantees of representation and collective bargaining as afore set forth and are endeavoring to frustrate and to bring to naught the provisions of the aforesaid statutory and constitutional clauses and enactments, contrary to equity and good conscience.

That your defendant union as the spokesman and representative of its members who are employed by plaintiff,

has long sought to bring about negotiations and the plaintiff has failed and refused to respond to the invitations and solicitations of this defendant union, acting on behalf of its members and that the picketing became necessary in order to appeal to the friends and sympathizers of the members of defendant union who are employed by plaintiff, in an endeavor to cause plaintiff to recognize your defendant union as a lawfully constituted bargaining agent, as aforesaid; that in the utmost of good faith, your defendant union has invited plaintiff to hold an election by secret ballot under any fair and impartial authority and by such secret ballot, demonstrate to plaintiff the bona fides of defendant union's assertion concerning majority representation.

That plaintiff seeks to deprive these defendants and the members of defendant union of the constitutional guarantee [fol. 14] of freedom of speech, as provided for in Article 1 and 14 Bill of Rights, Constitution of the United States of America and the similar provisions of the Declaration of Rights of the Constitution of the State of Florida, and the guarantee of Chapters 447.03 and 447.13 Laws of the State of Florida.

And defendants would respectfully show unto this Honorable Court that the allegations of the complaint and the prayer for relief in said complaint predicated upon such allegations alleging and averring a failure on the part of your defendants to meet the requirements of 447.09 (3 and 4) seek only to deprive your defendants of their constitutional guarantees of freedom of speech and to impose upon the individual members of the defendant union an involuntary servitude contrary to the provisions of the 1st, 13th and 14th Amendments of the Constitution of the United States of America for that the requirement of a majority vote, by secret ballot of all employees to be affected by a proposed strike would be to abridge and deprive each individual of his constitional (sic) right to speak freely his opinions and to refrain from working, individually or in concert with others, contrary to the aforesaid Constitutional provisions; that the said Statute would impose a prior censorship upon the right to freely express one's opinions and to refrain from working and to make know (sic) the

facts of a labor dispute; that the provisions of said Statute if applied to the facts of this instant case so as to grant the relief prayed for by the plaintiff would be to abridge these defendants and the members of the Union of their Constitutional guarantees as aforesaid.

And your defendants would further show that on May 25, 1955, a secret ballot was held wherein a majority of [fol. 15] the employees of plaintiff hotel did vote to strike said hotel, all pursuant to affidavits attached hereto and made a part of this Answer as if herein set out at this point, in haec verba.

Wherefore, your defendant union prays this Honorable Court that should this Honorable Court prefer to ascertain the fact of the majority representation by this Union through the process of election under control of the Court, rather than by the fair and impartial election held heretofore, then a commissioner be appointed to hold an election among the plaintiff's employees as to the commencement of the aforesaid strike and ascertain and report to this Honorable Court the truth and accuracy of the foregoing statement as to majority representation by the said Union and that this Honorable Court enter its Declaratory Decree declaring this Union to be in fact the duly authorized representative of the majority of plaintiff's "service" employees and that upon judicial ascertainment and Declaratory Decree, that this Honorable Court by its mandatory injunction, require the plaintiff to negotiate and bargain in good faith with this union on behalf of the members of the union, who are the employees of plaintiff, as is contemplated by Chapter 447 of the Laws of the State of Florida, together with Section 12 of the Bill of Rights, Constitution of the State of Florida and to deny the relief sought in the original complaint.

Gramling & Gramling, J. W. Brown, Ben Getler, Solicitors for Defendants, By Carrington Gramling, 224 Shoreland Bldg., Miami, Florida.

Certificate of service (omitted in printing).

[fol. 16] ATTACHMENT TO ANSWER

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY NO. 179,409

DI LIDO HOTEL, INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

STATE OF FLORIDA,
COUNTY OF DADE, *ss.*:

AFFIDAVIT OF SAM GYSON

I am known professionally as Sam Gyson; radio broadcaster over Radio Station WAHR and columnist for the Miami Beach Publication, "Panorama". I am a registered voter of Dade County as Samuel Jack Geison, residing in the City of Miami. On Tuesday night, May 24, 1955, I was the guest speaker at Hotel Employees' Union Local No. 255, at a meeting held at 920 Alton Road, Miami Beach. After Mr. David Herman, Special Organizer for the Union, revealed that he was unsuccessful in securing a strike vote supervisor or supervisory committee from among the Miami Beach City Council, the Presidents' Council and the City Clerk, I was asked if I would serve in a supervisory capacity to insure a fair and equitable election. I agreed.

On Wednesday morning, May 25th, I arrived at 920 [fol. 17] Alton Road. Persons appearing to vote were required by registrars on the voting premises to show suitable identification, for example, police identification cards, union cards or similar identification credentials. I exercised my right to challenge the qualifications of voters. At no time did I fail in securing the complete cooperation of Registrars or other election personnel. No one otherwise qualified to

vote in this election was refused the right to vote because he or she was not a union member.

Since the elections were being conducted at two other places, as well as the aforementioned 920 Alton Road, namely Union Headquarters at 1575 Washington Avenue and 240 N. E. 8th Street, Miami, Florida, it was necessary for me to shuttle among the three places. Consequently, although I did not personally see the qualification to vote of every individual, I was satisfied that the procedure which I was witnessing at the outset, was typical of the election. Following acceptance for registration, each voter was given an unmarked ballot, excepting for the name of the hotel with which he or she was affiliated. Then in the privacy of specially constructed booths, each voter marked his ballot and voted. The voter folded his own ballot to further insure secrecy before depositing it in a box hermetically sealed, except for a slot to receive the ballot. At no time did I see or hear of the custodian of the ballot box inquire of the voter how he voted. The voting box was at all times in full public view. At approximately 10:30 P. M., on the day of May 25th, in the presence of more than 200 hotel employees at 920 Alton Road, I described the following procedure and paused at each point to receive a challenge from those present, who chose to challenge either procedure or my capacity as a challenging observer of the election and vote tally. I made it clear that if there were a single challenge, not a majority, just a single challenge, I would withdraw from my role as a challenging observer. [fol. 18] There was no challenge. I inquired of all assembled at that time whether any single qualified individual had been denied the right to vote. No one stepped forward. I also inquired whether anyone knew of any unfair or wrong procedure, in the conduct of the election. No one stepped forward. I also inquired whether anyone desired to challenge my capacity or conduct of the election. No one stepped forward.

My efforts as challenging observer gave me free call on the services and assistance of Jack Cullerton, Sidney Sommer, Ruth Saillant and Al Gonzales. At no time, did they question my judgment, but rather, carried out my instructions.

The procedure for counting is as follows: Three sealed ballot boxes were delivered to 920 Alton Road, one from 1575 Washington Avenue, Miami Beach, and two from 240 N. E. 8th Street, Miami, Florida. Three sealed ballot boxes were already located at 920 Alton Road. These six boxes had all been sealed. They were placed side by side on a table in full view of the more than 200 persons present. The procedure which I could not witness in its entirety for reasons to be explained later, but whose faithful execution is certified by affidavit included:

1. Opening the ballot boxes one by one and counting the total number of votes cast. This number was compared to the total registrations.

2. The total number of "yes" and "no" votes were tabulated.

3. A breakdown of the "yes" and "no" votes with respect to each hotel whose employees were involved in this election.

There were at least six observers present at all times in addition to the large crowd of approximately 200 persons who were permitted to watch the entire counting.

It was not possible for me to witness at first hand the entire vote collection and tallying process because of my professional work, which brings me to the air at 11:30 each night except Sunday.

[fol. 19] Further affiant sayeth not.

/s/ (Samuel Jack Geison) Sam Gyson

Subscribed and sworn to before me at Miami Beach, Florida, this 25th day of May, 1955.

/s/ Bertha Zolun, Notary Public, State of Florida at Large

My commission expires: Feb. 10, 1959

[fol. 20] ATTACHMENT TO ANSWER

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY NO. 179,409

DI LIDO HOTEL, INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

STATE OF FLORIDA,
COUNTY OF DADE, *ss.*:

AFFIDAVIT OF JACK CULLERTON, SIDNEY SOMMER, RUTH SAILLANT AND AL GONZALES

Before me, the undersigned authority, this day personally appeared Jack Cullerton, Sidney Sommer, Ruth Saillant and Al Gonzales, who, being by me first duly sworn, depose and say as follows:

That Sam Gyson is a radio announcer, columnist and feature article writer and has been engaged in such activities in Dade County, Florida, for ..... years; that on May 24, 1955, the said Sam Gyson agreed to supervise, as impartial observer and supervisor, an election to be conducted among employees of the several hotels in and about the cities of Miami and Miami Beach, Florida; that affiants herein are working under Sam Gyson and aiding him in observing and conducting said election.

That notice of said election was given to all persons [fol. 21] employed at said hotels on May 21, 1955, and each day thereafter, until the start of said election, namely, 8:00 o'clock A. M., May 25, 1955, and such notice was given in the following manners:

1. Causing there to be published in the various newspapers of Dade County, Florida, notice of the holding of said election, purpose of said election, and dates, places and times of said election;

2. Causing there to be announced on the various radio and Television Stations, notice of the holding of said election, purpose of said election, and dates, places and times of said election;

3. Posting notices of the conduct of said election, purpose, dates and time of said election on bulletin boards located at the Headquarters of the Hotel Employees' Local Union #255, A. F. of L., 1575 Washington Avenue, Miami Beach, Florida, 920 Alton Road, Miami, Beach, Florida, and an identical notice was posted on the bulletin boards of Hotel & Restaurant Employees' and Bartenders' Local Union #133, A. F. of L., at 240 Northeast 8th Street, Miami, Florida; (A true and exact copy of said notice is attached hereto and made a part hereof.)

4. By publishing and distributing handbills announcing the holding of said election, the purpose, dates, places and times of said election, and such handbills were distributed in front of and outside each of the major hotels, and most of the smaller hotels, in Miami Beach and Miami, Florida. Said handbills were also distributed at various central points throughout Dade County, Florida.

By the above set forth various means, affiants believe that every person eligible to vote, did receive notice of the election.

[fol. 22] Said election started at 8:00 o'clock A. M. Wednesday, May 25, 1955. The voting was conducted at the following premises:

920 Alton Road, Miami Beach, Florida
240 Northeast 8th Street, Miami, Florida, and
1575 Washington Avenue, Miami Beach, Florida.

Said election was conducted from the hour of 8:00 o'clock A. M. to 10:00 o'clock P. M., or until all persons in line by 10:00 o'clock P. M. had completed the voting. The voting was conducted in the following manner:

So as to insure complete privacy and secrecy of the ballot (copy of a sample ballot is hereto attached), at each voting place there were seated at the entrance of the voting premises persons working un (sic) the direction of these affiants. As each voter entered the voting premises, he or she was required to show bona fide identification to establish that he or she was employed at a hotel in Miami or Miami Beach, Florida. The person seated at the registration table would then fill in on the ballot the name of the hotel at which the voter was employed. The voter was then required to register by signing his or her name in the registration book and the name of the hotel in which he or she was employed, and his or her craft. After such registration, the voter was handed a ballot with the name of the hotel filled in.

At the voting premises, 920 Alton Road and 240 Northeast 8th Street, private voting booths had been erected in which the voter marked his or her ballot in secrecy; at 1575 Washington Avenue, Miami Beach, there were no individual voting booths erected but there was a private office provided so that the voters could mark their ballots in secrecy.

[fol. 23] After marking the ballot, the voter folded his or her ballot and dropped it in a ballot box on the voting premises placed there for that purpose so that at no time could anyone observe or discover how any particular voter had voted. The said voting box located at each voting premises was at all times in plain view and was in no way tampered with.

The counting procedure was as follows: As soon as the voting was over at each voting place, the ballot boxes which had been completely sealed except for an opening at the top for the dropping in of ballots, were further sealed by closing the opening at the top. All the ballot boxes were then brought together at 920 Alton Road, Miami Beach. Three were already at 920 Alton Road, one such sealed box was brought from 1575 Washington Avenue, Miami Beach; two such sealed boxes were brought over from 240 Northeast 8 Street, Miami. These 6 boxes were then placed side by side on a table in full view of several hundred persons who were present at the Alton Road

premises. Mr. Gyson inquired of all the persons present concerning any objections to the election or to himself as observer and supervisor. There were no objections whatsoever. The ballot boxes were opened one by one and the total number of votes cast were tabulated. That number is presently being compared to the total number of registrations. The comparison as yet has not been completed. The total number of votes cast were 2849; the total number of Yes and No votes were then tabulated. The total number of Yes votes were 2803; the total number of No votes were 44; the total number of void ballots were 2.

As pointed out before, the entire checking and counting procedure has not been completed.

There were at least 6 observers present at all times, in addition to the large crowd of several hundred persons who were permitted to watch the entire procedure.

[fol. 24] Each of the undersigned served under Sam Gyson and carried out all of his instructions in their entirety, in exactly the same manner as though he were present at every stage of the proceedings.

Further affiants sayeth not.

/s/ Jack Cullerton, /s/ Sidney Sommer, s/ Ruth Saillant, /s/ Al Gonzales.

Sworn to and subscribed before me this 26 day of May, 1955.

s/ Bertha Zolun, Notary Public
My comm. expires: Feb. 10, 1959

[fol. 26]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180,374

[Title omitted]

TEMPORARY RESTRAINING ORDER—June 16, 1955

This Cause has been heard after due notice on plaintiff's application for interlocutory injunctive relief, and the Court has heard and considered the proofs submitted in support of and in opposition to such application.

The Court is guided and governed by the opinion of the Supreme Court of Florida filed May 27, 1955, in Sax Enterprises, Inc. versus Hotel Employees Union, Local No. 255 (A. F. of L.), et al., as the same was applied in my opinion and order filed June 10, 1955, in McAllister Hotel, Inc. versus Hotel Employees Union, Local No. 255 (A. F. of L.), et al (Chancery Cause Numbered 180,054), Biscayne Terrace Hotel, Inc. versus Hotel Employees Union, Local No. 255 (A. F. of L.), et al., (Chancery Cause Numbered 180,055), and Abe Allenberg, et al., doing business as Miami Colonial Hotel versus Hotel Employees Union, Local No. 255 (A. F. of L.), et al. (Chancery Cause Numbered 180,-[fol. 27] 056). Under the principles therein enunciated the picketing is unlawful.

Accordingly, It Is Ordered and Decreed that the defendants, Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, their agents, servants, employees, and all persons acting in concert or participation with them, be and they are, and each of them is, restrained and enjoined until the further order of this Court from picketing the plaintiff's place of business located at 6393 Collins Avenue, Miami Beach, Florida.

The plaintiff shall, within four days from this date, furnish and file a good and sufficient bond in the penal sum of $2,500.00, payable to the defendants, with surety or sureties to be approved by the Clerk, conditioned to pay all damages and costs which the defendants shall suffer

or incur as a result of the wrongful application for this order should it be determined that such application was wrongful.

Done and Ordered in the Courthouse, Dade County, Florida, at Miami, June 16, 1955.

Vincent C. Giblin, Circuit Judge.

[fol. 28]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY No. 180,374

[Title omitted]

SUPPLEMENTAL ANSWER—Filed June 28, 1955

Come Now the defendants and make this their Supplemental Answer and would respectfully show unto this Honorable Court that this Court is without jurisdiction to act in the cause for the reason that the plaintiffs in operation of said hotel are engaged in a business which affects inter-state commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state buslines, inter-state and international steamship companies and by passenger automobiles.

Said business further is part of "package deal" arrangements with said various inter-state and international airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Trans-World Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular & Occidental Steamship Company, Waterman

Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coast Line Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various [fol. 29] inter-state bus line companies including Greyhound Bus Line Company, Trailways Bus System and various other inter-state bus line companies. Said "package deal" arrangements are arrangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by plaintiffs and said inter-state carriers. All expenses incurred in promoting, making and consummating said inter-state and international sales are jointly shared by plaintiffs and said inter-state and international carriers. The proceeds of said inter-state and international sales are divided between plaintiffs as operator of said hotel and said inter-state and international carriers.

Said plaintiffs, as a part of the operation of said hotel, purchase numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said plaintiffs as a part of the operation of said hotel sell directly outside of the State of Florida and within the State of Florida for carriage or resale outside of the State of Florida.

Said plaintiffs as part of the operation of said hotel advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the states of the United States outside of the State of Florida and in various countries outside of the United States.

Plaintiffs as part of the operation of said hotel have on said premises various shops and services engaged in inter-state commerce including Western Union Telegraph services, numerous travel agencies, transportation offices for airlines, steamship lines, railroad companies and bus lines, inter-state stock exchange branches, inter-state chain drug stores, inter-state clothing stores and other inter-state retail stores.

Defendants further state that said hotel is part of a multi-state chain, said entire chain being engaged in inter-state commerce, so that labor disputes at plaintiffs' hotel affects inter-state commerce.

Defendants further state that the Congress of the United States has by legislative enactment under the Constitution of the United States, occupied the fields as to all matters [fol. 30] complained of in the petition of plaintiffs and this State Court has no jurisdiction to act in the premises wherefore the said cause should be dismissed for lack of jurisdiction.

Gramling & Gramling, J. W. Brown, Ben Gettler, By Carrington Gramling, 224 Shoreland Building, Miami, Florida, Solicitors for Defendants.

Certificate of service (omitted in printing).

[fol. 31]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY No. 180,374

[Title omitted]

STIPULATION RE FINAL HEARING—Filed November 30, 1955

It Is Stipulated by and between counsel for the respective parties that all testimony and other evidence heretofore introduced in this case, be and the same is hereby reaffirmed for the purpose of final hearing, with the addition, however, that at said final hearing the defendants would produce Clarence Smith, who would testify according to the Affidavit attached hereto.

It Is Further Stipulated that Defendants would produce the signatories of the designation cards, attached hereto, who would severally testify that "they have designated Hotel Employees Union #255 as their collective bargaining agent; that they have each requested the Union to negotiate on their behalf with the employer on all matters dealing with wages, hours, and conditions of employment. The witnesses would also testify that such designation was prior to the commencement of picketing unless the cards show otherwise.

It Is Further Stipulated that the defendants would produce Clarence Smith as a witness, who would further testify according to his second affidavit attached hereto, and it is

Stipulated that said testimony concerning inter-state commerce would be objected to on the grounds that such testimony is immaterial and irrelevant; and it is

[fol. 32] Stipulated that this testimony of Clarence Smith and the objections thereto be submitted to the Chancellor for ruling thereon, and in the event the objection is sustained, the affidavit of Clarence Smith shall remain as part of the record as a proffer, and all objections as to form of such proffer be and they are hereby waived.

It Is Further Stipulated that final decree be entered by the Chancellor upon the record as now made in the light of this Stipulation.

Witness our hands at Miami, Dade County, Florida this 30 day of November, 1955.

Sibley & Davis, Attorneys for Plaintiff, By /s/ Marion Sibley.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By Carrington Gramling.

[fol. 33]

No. 180374

AFFIDAVIT OF CLARENCE SMITH FOR DEFENDANTS—
Filed November 30, 1955

State of Florida,
County of Dade, ss:

Before me, the undersigned authority, this day personally appeared Clarence Smith, who being by me first duly sworn, deposes and says as follows:

"My name is Clarence Smith, and I am a resident of Dade County, Florida and have been for approximately 22 years; that I am an Organizer and Officer of the Hotel Employees' Union, Local #255 and that as a part of my duties I have charge of the cards signed by various "service employees" in the hotel industry in and about Miami Beach; that in the due course of the affairs of my office there have been presented to me 51 cards signed by employees of the Delmonico Hotel designating the Hotel Employees' Union, Local #255 as their respective bargaining agents; that the 51 cards submitted to this Honorable Court herewith were freely and voluntarily delivered to me in due course in the operation of my office. Many were signed in my presence, many were mailed in and others were brought to me by employees of the Union, but [fol. 34] all of these cards came to me in due course of business; that should the Court desire, I will assist in causing the 51 signatories to personally be and appear before this Honorable Court to testify as to the authenticity of the cards.

Further Affiant Sayeth Not.

/s/ Clarence Smith

Sworn to and subscribed before me, this 15 day of Nov., 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large.

My Commission Expires: Aug. 20, 1959.

(Seal)

[fol. 35]

No. 180,374

AFFIDAVIT OF CLARENCE SMITH FOR DEFENDANTS—
Filed November 30, 1955

Personally appeared before me the undersigned authority Clarence Smith, who being by me first duly sworn deposes and says as follows:

"My name is Clarence Smith, and I am Business Agent with Hotel Employees Union, Local 255 duly licensed under the laws of the State of Florida and have been a resident of Dade County, Florida for the past 22 years. That plaintiffs, in the operation of their hotel are engaged in a business which affects interstate commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of person come to Florida from varicus states of the United States outside of Florida, and from various countries outside of the United States by various interstate and international carriers including airlines such as American Airlines, Pan American Airways, Delta, Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, interstate bus lines, inter-state and international steamship companies, and by passenger automobiles. Said business further is part of "package deal" arrangements with said [fol. 36] various inter-state and international airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Transworld Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular and Occidental Steamship Companies, Waterman Steamship Corporation, and many other companies; various interstate railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coastline Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various interstate bus lines companies including Greyhound Bus Lines Company, Trailways Bus System and various other inter-

state bus line companies. Said "package deals" arrangements are arangements (sic) whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an intergral (sic) part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by Plaintiffs and said inter-state carriers. All expense incurred in promoting, making and consummating said inter-state and inter-national sales are jointly shared by Plaintiffs, and said inter-state and international carriers. The proceeds of said inter-state and inter-national sales are divided between Plaintiff, as operator of said hotel and said inter-state and international carriers; said sales of Plaintiff in inter-state commerce exceed in volume amount sufficient to establish Jurisdiction of National Labor Relations Board under its rules and regulations.

Said plaintiffs, as a part of the operation of said hotel, purchases numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said Plaintiffs, as a part of the operation of said hotel, sell directly outside of the State of Florida and within the State of Florida for carriage or re-sale outside of the State of Florida. Said plaintiffs as part of the [fol. 37] operation of said hotel, advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the States of the United States outside the State of Florida and in various countries outside of the United States.

Further Affiant Sayeth Not.

/s/ Clarence Smith, Affiant.

Sworn to and subscribed before me this 15th day of November, 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large

My Commission Expires: Aug. 20, 1959.

[Seal]

[fol. 39]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180374

HOTEL DELMONICO INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL 255, (AFL) et al.,
Defendants.

No. 180373

SAUL COHEN, et al., d/b/a PRESIDENT MADISON HOTEL,
Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL 255, (AFL) et al.,

Miami, Florida.

Transcript of Hearing—June 15, 1955.

The above-entitled causes came on for hearing before the Hon. Vincent C. Giblin at the Courthouse, Miami, Florida on Wednesday, June 15, 1955 at 2:30 p.m.

[fol. 40] APPEARANCES:

Darry A. Davis, Marion E. Sibley, and Thomas H. Barkdull, Esqs., on behalf of the Plaintiffs.

J. Carrington Gramling, Esq. and Ben Gettler, Esq., on behalf of the Defendants.

[fol. 41]

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Gramling: Your Honor please, I have the unpleasant function on the insistence of my clients of presenting these to you, sir.

The Court: They are the same in both cases?

Mr. Gramling: Yes, sir.

The Court: I refuse to recuse myself. I don't think the applications and affidavits show disqualifications.

Mr. Gramling: Well sir, may I be heard briefly to this extent on it, that it isn't a matter of your deciding——

The Court: I decide whether the facts set forth are sufficient if true, and I assume them to be true, to disqualify myself. I hold they are not sufficient.

Mr. Gramling: In other words, the Statute has not been complied with?

The Court: That's right.

Mr. Gramling: Well, sir, without of course waiving that point—I am sure that as in the courtroom, the exceptions are noted in matters such as this, then we do have Answers to file before the Court so that the matter would not rest just solely upon the sworn complaint.

Sir, I just filed before you the answers in the Delmonico case and I now file before you the answer in the President Madison Hotel case. Incidentally, sir, there are no chancery numbers on any of these papers because it wasn't on the papers that were served on me and I haven't had an oppor-[fol. 42] tunity to check——

The Court: What is the Madison number?

Mr. Barkdull: The President Madison number is 180373 and the Delmonico is 180374.

The Court: Any evidence?

Mr. Davis: We are here on the application for a temporary injunctive relief as prayed for by the complaints.

The Court: I am interested in the question of whether or not prior to the picketing and walkouts in these cases, what evidence was presented to the employer——

Mr. Gramling: Sir, that is set forth in our answer.

Mr. Gettler: Your Honor, there has been no walkout in either of these two cases.

Mr. Gramling: There is picketing without any walkout.

The Court: Can you reach an accord as to when the picketing began, the date?

Mr. Davis: I don't think there is any dispute about that. I believe it can be stipulated that the picketing commenced

at the Delmonico Hotel on May 27, 1955 and that the picketing at the President Madison Hotel commenced on May 31, 1955.

Mr. Gramling: And we admit the wording of the picket banners.

Mr. Davis: As alleged in the complaint?

[fol. 43] Mr. Gramling: Yes, and there we cease admitting.

Mr. Davis: It is also admitted for the purpose of the record that there has been no walkout, strike or cessation of work by any employee but that the employees have continued working and crossing the picket line.

Mr. Gramling: That's right.

Mr. Gettler: Can we also admit in the President Madison case that on May 28, 1955 that plaintiffs received a telegram stating as set forth in the petition?

Mr. Davis: Yes.

Mr. Gettler: And that no answer to that telegram was ever sent?

Mr. Davis: No written reply.

Mr. Gettler: No written reply.

Mr. Davis: And the same is true of the Delmonico Hotel, that a telegram was received on April 20, 1955 as alleged in the complaint and that no written reply thereto was made.

Mr. Gettler: In what paragraph of the Complaint is April 20th set up for the Delmonico.

Mr. Davis: I'm sorry; it doesn't allege it.

Mr. Gettler: Yes, it does, on the top of Page 4. Yes; we will admit that on April 20, 1955 Mr. Herman on behalf of Local 255 sent a telegram to the plaintiff requesting a conference. We don't have a copy with us, as far as the exact wording is concerned. Do you have the telegram?

[fol. 44] Mr. Davis: I will be glad to exhibit it. I have the telegram which I hand you for examination.

Mr. Gettler: We will stipulate that this is the telegram referred to in Paragraph 5 of your complaint.

Mr. Davis: The telegram may be admitted into evidence without further proof.

Mr. Gettler: No objection.

The Court: It will be marked in the Delmonico case—Plaintiff's Exhibit 1, No. 180374.

(The telegram referred to was thereupon marked "Plaintiff's Exhibit No. 1".)

Thereupon—Sam Rosen was called as a witness by the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. State your name.
A. Sam Rosen.
Q. What connection do you have with the plaintiff hotel, Hotel Delmonico, Inc.?
A. I am the secretary-treasurer.
Q. Does the Hotel Delmonico, Inc. operate the Delmonico Hotel on Miami Beach?
A. Yes.
[fol. 45] Q. When did they commence operating this Hotel?
A. May 1st.
Q. 1955?
A. 1955.
Q. Prior to the receipt of the telegram on April 20, 1955 which has been admitted into evidence as Plaintiff's Exhibit 1, were you acquainted with David Herman?
A. I was introduced to David Herman in Darby's Restaurant.
Q. When?
A. That was April 19th, the day before the telegram.
Q. What transpired on that occasion?
A. On that occasion he showed me a letter from one of the hotels, from the San Marino Hotel, showing that they will sit down and negotiate a contract with them and he asked me, "What about you?" And I says, "How can I tell you anything about this; I am not even in at the hotel.

We are first going in May 1st." And on the next day I received a telegram.

Q. Did you have any conversation with Mr. Herman after you received the telegram on April 20th?

A. Yes, I did have another conversation—I think it was —I believe the next conversation that I recall was after the election that Mr. Herman called me up and he says, "The Democrats——

Q. You refer to "election"—— Do you mean the election [fol. 46] they had at the union hall?

A. The election of all of the hotel employees. He called on a Thursday and he said, "The Democrats won." And he says, "What about it?" So I says to him, "All right; refer to Mr. Sibley. This is our attorney from here on. I have nothing to say."

Q. You referred Mr. Herman to Mr. Marion Sibley?

A. To Mr. Sibley.

Q. Was anything else said in this conversation on this occasion?

A. Not that I recall.

Q. Was that the last conversation you had with Mr. Herman?

A. That is the last I had. Then this was just the day before—on a Friday we were picketed—that was on the 27th.

Q. The picket line was thrown up at your hotel on May 27th?

A. May 27th. That was on a Friday, I believe.

Q. Did any of your employees walk out, cease work?

A. No.

Q. Did they continue to cross the picket line?

A. They did.

Q. At any time prior to the time that the picket line was thrown up on May 27, 1955, did Mr. Herman or anyone [fol. 47] else on behalf of the union provide you with any proof that they represented the employees?

A. No.

Mr. Davis: You may inquire.

Mr. Gettler: No questions.

Thereupon—Joe Cole was called as a witness by the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. State your name.
A. Joe Cole.
Q. What do you do?
A. I am a manager of the Delmonico Hotel.
Q. How long have you been so employed?
A. Since April 6, 1955.
Q. Did you ever have any conversations with Mr. David Herman? Or anyone else connected with the defendant union?
A. I did not.
Q. Were you present at the hotel when the picket line was thrown up on May 27, 1955?
A. I was.
Q. What time of the day approximately was the picket [fol. 48] line thrown up?
A. Approximately 5:30 p.m.
Q. I hand you this photograph and ask you to examine it and state whether it accurately depicts the sign, the placard borne by the pickets at the time the picket line was set up?
A. That's correct.

Mr. Davis: We tender in evidence photograph identified by the witness and ask that it be marked Plaintiff's Exhibit 2.

Mr. Gettler: We have no objection.

(The photograph was marked "Plaintiff's Exhibit No. 2".)

By Mr. Davis:

Q. Mr. Cole, on or about June 13, 1955, was the placard worn by the pickets changed?
A. In one case, yes.
Q. I hand you a photograph and ask you to examine it and state whether or not that truly depicts the change in signs or placards worn by the pickets at that hotel?

A. One picket, yes. That's true.

Mr. Davis: We tender into evidence the photograph identified by the witness and ask that it admitted into evidence as Plaintiff's Exhibit 3.

Mr. Gramling: Is it contended that this was changed and that thereafter the picketing has been consistent with [fol. 49] this, or did this happen on one isolated day?

By Mr. Davis:

Q. Did the placard worn in the photograph which is referred to, was that maintained thereafter or was it subsequently changed back to the original placard?

A. It was subsequently changed back to the original placard.

Mr. Gettler: How long was the placard carried, this placard?

The Witness: Approximately two hours.

Mr. Gramling: We object to the introduction of this as having been an isolated incident of two hours duration in the past. The application here is for an injunction against future picketing. The testimony of this witness would show that this particular picketing occurred only for two hours and at some date in the past and has not been repeated.

Mr. Gettler: I would also object to it on the further ground, your Honor, there is no allegation whatsoever in the petition concerning the carrying of such a banner for two hours or any other period of time. The allegations in the petition are in regard to a banner stating specific words: "This Hotel refuses to aid in determining its employees bargaining agent. Join the Hotel Employees Union, Local 255, A. F. of L., 1575 Washington Avenue, Miami Beach."

The Court: In other words, this kind of placard is not being used in the present picketing?

[fol. 50] The Witness: No, sir; your Honor.

The Court: I will sustain the objection.

Mr. Davis: You may inquire.

Mr. Gettler: No questions.

Mr. Davis: Plaintiff rests.

Thereupon—DAVID HERMAN was called by the Defendants, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gettler:

Q. Will you state your name and address?
A. David Herman, Miami Beach. Seaview Apartments.
Q. What is your connection with Hotel Employees Union Local 255?
A. Special organizer.
Q. In that capacity have you had occasion to contact anyone from the Delmonico Hotel?
A. Yes.
Q. When did you do that—the first contact?
A. The first contact that I had with Mr. Sam Rosen of the Delmonico Hotel was at the suggestion of a mutual friend. It took place on April 19th in the office of Darby's restaurant on Lincoln Road.
Q. What time of day?
[fol. 51] A. At approximately 2 o'clock in the afternoon. I think it might have been earlier; I am not sure. We had sent a telegram to the San Marino Hotel and the San Marino in response to our telegram claiming representation of the employees wrote a letter and——

Mr. Davis: I object to testifying to the contents of a letter from the San Marino Hotel.
The Court: Sustained.

By Mr. Gettler:

Q. Will you restrict yourself——
A. All right. As a result of certain correspondence between the San Marino Hotel and the union, it was suggested by a mutual friend that there be a meeting between Mr. Sam Rosen and myself.

Mr. Rosen and I met in the office of Darby's Restaurant on April 19th. I told Mr. Rosen that the majority of the employees at the Delmonico were members of Local 255.

He admitted that it was so; that he knew from conversations that he heard around that the vast majority of the employees were members of the union.

I said, "Well, if there is any doubt in your mind, let's have an election and determine it and we will have a secret ballot election and then you can decide and the outcome will decide whether we do or not. Meanwhile, if you don't doubt it, let's see if we can work out an agreement about the wages, the hours, and the other working conditions [fol. 52] so that we can begin to settle things instead of continually unsettling things."

Mr. Rosen said he would love to do that but he can't do it here and now. He said, "You send me a telegram making the same request as you did in the other hotels and I will respond to the telegram favorably and arrange for a conference where we can discuss the wages, hours and conditions."

I went back to the office and the next day I sent Mr. Rosen a telegram which is in evidence here, setting forth that the union represents a substantial number of its employees without mentioning any number and asking for a conference to discuss wages, hours and conditions of employment, according to the conversation of the 19th.

The letter or telegram, rather, was supposed to be followed by a letter from Mr. Rosen, acknowledging the telegram and setting up a date for a conference.

I didn't hear from Mr. Rosen in the next day or two and I called him. I asked him what had happened, that I had not received a response to a telegram and he told me pretty much the same thing that I had heard on several occasions from others.

He said, "Herman, I am very sorry, but I can't do it. The big hotel owners wouldn't permit me to do it. If I enter into negotiations with your union and enter into any kind of agreement, they are just going to choke me off. I live on the overflow from the Casablanca and the Monte Carlo. [fol. 53] I am in between those two hotels and if I break the ranks while they are having a fight with the other hotels, they will choke me off and I won't be able to continue in business."

The argument went back and forth. I tried to reason with him that he should be independent and act as he

sees in the best interests of his own business and not be guided and pushed around by others, but that was neither here nor there.

I told him he was making a serious mistake because it would lead to walkouts and picketing and general labor strife instead of employee-employer harmony which is what we were trying to bring about.

There followed several other conversations with Harry Kazan who is also an official of the corporation. I think he is the president of the corporation. I talked to Mr. Kazan on the telephone——

Q. What date?

A. On five or six different occasions between the 25th of April and the time that the picketing commenced on the 27th of May.

Q. You say you spoke to Mr. Kazan?

A. Yes, sir; in the same vein.

Q. Describe your conversation with Mr. Kazan.

A. My conversation with Mr. Kazan were to the same effect, that the employees want to be represented by the union; they are entitled to be represented by the union [fol. 54] under the laws of the State of Florida and under the Laws of the United States and since the law provides that the employees have a right to select their collective bargaining agency of their own choosing, that they should permit the employees to choose that agency in a fair and secret and impartial election and Mr. Kazan didn't have anything to disagree with what I said.

Everything that I said was acceptable to him, but he said, "I can't do it." He said, "I can't do it; we are not going to be the only ones. There is a fight with the union; we are going to have to go in and fight, much as we don't like to," and that was the gist of the argument.

Q. Did he give you a specific reason why he couldn't do it?

A. Specifically because he didn't want to be pushed by the other hotel owners in Miami Beach who were fighting the union and he will be looked upon as a renegade if he broke the ranks and he would undoubtedly be retaliated against in the form of depriving him of business and in other ways exerting pressure on his business if he were to break the ranks of the Hotel Association and for that

reason he said, "I cannot enter into any discussion with you: I would not agree to an impartial secret and fair election," and told me I was a nice fellow and I told him he was a nice fellow but we were having a disagreement and from then on, the picketing commenced.

At no time did Mr. Rosen or Mr. Kazan tell me that [fol. 55] they were represented by Marion E. Sibley; at no time did they refer me to Mr. Marion E. Sibley, and I have reason to believe that they did not engage Mr. Marion E. Sibley until long after the picketing commenced.

Q. Mr. Herman, do you know of your own knowledge whether Local 255 has been designated as the bargaining representative of various employees of the Delmonico Hotel?

A. Yes, sir. We have signed authorization cards and valid membership of a substantial number of employees in the Delmonico Hotel.

Mr. Davis: I object to the question and move to strike the answer on the ground that the designation cards are the best evidence.

The Court: Sustained.

Mr. Gettler: May I be heard on that, your Honor. As I understand from your Honor's opinion in the McAllister case and the Biscayne Terrace case and the Miami Colonial cases, we must show to a reasonable employer by some method that the union represents employees. Mr. Herman has testified at great length concerning the efforts that he made.

Now I am asking him a basis for those efforts as to why. In other words, he even went to the employer to try and show this. As I understand from your Honor's ruling in the previous cases, it isn't to the Court that we show it but to the employer and we are trying to show your Honor here that we have tried in many ways to show the [fol. 56] employer that we represent the people.

The Court: The objection was to testimony by which the witness undertook to state what was shown by cards.

Mr. Gettler: My question basically goes to this, your Honor: Whether his statements made to the employer were true. I am asking him under oath now whether those statements made to the employer were true.

The Court: All right. The objection is sustained. He is

testifying as to the contents of written documents which are not produced.

By Mr. Gettler:

Q. How many employees of the Delmonico are members of Local 255?

Mr. Davis: I object to that, that the records are the best evidence.

The Court: Overruled.

The Witness: In the absence of the cards before me—I just came off a plane. I haven't had a chance to look through them. I have been out of my office from the time this was filed until my appearance here now. I could only hazard an approximate guess. I would say about 35 or 40.

Mr. Davis: I object to the witness's hazardous guess.

The Court: Sustained.

The Witness: That is the best I can do.

Mr. Gramling: Would it be possible to stipulate that [fol. 57] after he has refreshed his memory he advise the court reporter the number and fill it in. In other words, as though it were a blank here now?

Mr. Davis: No. You have, as indicated by other litigation, you have either applications for membership or have designation cards. I think those are the best evidence and I submit that that is what we would like to establish.

Mr. Gramling: This case is different in this respect: We are asking him how many are members because we haven't pulled the members out. We obviously don't want to reveal their identities and therefore our technique as in the past of showing the cards or having the members themselves come up obviously can't be followed in this because we are fearful of retaliation against our members.

Mr. Sibley: Your Honor, their technique of secrecy which has permeated all their negotiations are why they are in court and why the injunctive orders have been granted.

They admit now they are unwilling for us to see the cards or to know who they represent. Having admitted that they have never shown them to us or the employer, not even willing now for us to see them, I think they practically admit our complaint here.

Mr. Gramling: We will give you a secret ballot election, if you want one.

Mr. Gettler: We are asking the Court, as a matter of [fol. 58] fact, to name any method or appoint a Master to determine the wishes of the employees. That should certainly be a showing to the Court.

The Court: I don't see how the employer or the Court can determine that the majority of the employees have chosen the union as their bargaining agent when the union is unwilling to reveal the names of the employees of the hotel who belong to the union.

Mr. Gettler: Your Honor, we have requested in our Answer——

The Court: I don't see how you can meet the requirement of the Supreme Court that you establish the fact that the union represents the employees if——

Mr. Gramling: If your Honor please, as far as the record goes, it is now at this point undisputed that that question was not raised by the employer. Obviously that is a requirement that he can waive if he desires to and the testimony is undisputed.

The Court: He didn't testify to that effect. Mr. Herman has.

Mr. Gramling: Mr. Herman has testified to it and there is nothing to the contrary in the record at this point.

Mr. Davis: There will be on rebuttal, I assure you.

Mr. Gramling: We have prayed that this Court appoint a Commissioner to determine the fact that these employees [fol. 59] —without revealing their identity—do wish this union to represent them. That has always been our stand and it is undisputed in the record by this witness that this goes way back to something like 47 days prior to the commencement of the picketing.

We would respectfully aver that it isn't our understanding of the Supreme Court decision that the identity of each member of the union who is an employee of an employer be revealed to the employer and I believe in your McAllister ruling you said——

The Court: How would you satisfy a fair, reasonable and prudent employer that the union represents a majority of the employees?

Mr. Gramling: A secret election. That is the way the United States does it.

The Court: The election hasn't been held.

Mr. Gettler: We have asked the employer for the election.

The Court: It has not yet been held so it hasn't been yet established, but yet the picketing has begun.

Mr. Gramling: How can we hold an election to the satisfaction of an employer who doesn't require it or on the other hand, refuses to participate in any fashion or refuses to hold one. Then how are you going to have one?

The Court: Let's proceed.

Mr. Gettler: Our picketing is predicated upon their re-
[fol. 60] fusal to let us in any way show them that we represent the employees, your Honor.

By Mr. Gettler:

Q. Mr. Herman, does Local 255 number among its membership employees of the Delmonico Hotel?

A. Yes.

Q. Were any instructions given to members of Local 255 in regard to continuing to work at the Delmonico Hotel after the picket line was put on?

A. Yes, sir.

Mr. Davis: I object to the question and move to strike the answer on the ground that it could not be binding on the plaintiff. Immaterial.

The Court: I will overrule the objection.

By Mr. Gettler:

Q. What were those instructions?

A. The instructions were in the nature of a leaflet addressed to the employees directing them not to walk off the job but to continue to work while the picketing is going on. Those were the instructions.

Q. After the picketing started, did you have any conversation with any representative of the Delmonico Hotel: do you remember any such?

A. No; I don't recall.

Q. Mr. Herman, on May 25, 1955, was there a secret

ballot election held among the employees of the Delmonico Hotel?

[fol. 61] A. Yes.

Q. Mr. Herman, let me finish the question. —For the purpose of determining whether or not those employees desired to have Local 255 represent them in dealings with the Delmonico Hotel as far as employment and labor relations are concerned, and authorizing a strike.

Mr. Davis: Just a minute. I object to the question and move to strike the answer to the preceding question on the grounds that it isn't contended that there was ever any strike at this hotel and any election held after picketing commenced can have no bearing on the hearing today.

Mr. Gettler: The question was your Honor in regard to an election which was basically for two purposes as stated in my question: To determine whether the employees desired Local 255 to represent them in all their collective bargaining matters and also to determine the question as to the strike.

The Court: The question is whether such an election was held.

Mr. Gettler: Was held.

The Court: Objection overruled.

The Witness: Yes, sir.

By Mr. Gettler:

Q. What was the result of that election?

A. Specifically in the Delmonico Hotel, the vote was overwhelmingly in favor of authorizing the union to rep-

[fol. 62] resent the employees in the Delmonico Hotel and also authorizing calling a strike in the Delmonico Hotel. At the absence of the records, I don't know the specific number or specific figures.

Q. Was a strike ever called?

A. Technically there was no strike because the employees were not called out and this vote was before the picketing commenced, not following the picketing.

Q. This vote occurred May 25, 1955?

A. Yes.

Q. And the picketing started May 27th?

A. That's right.

Mr. Gettler: That's all.

Cross examination.

By Mr. Davis:

Q. This election held May 25, 1955—where was it held?

A. It was held in three localities, in Dade County. Two localities were on Miami Beach; one was in Miami City.

Q. How was it conducted? That is, how were the ballots disseminated to people wishing to vote?

A. The ballots were distributed to each applicant who came in and identified himself as a member of a particular hotel, an employee of a particular hotel. He was then given a ballot by an officially-designated registrar who marked [fol. 63] the name of the hotel on the ballot.

Q. In other words, you took the person's word that he was an employee of a certain hotel? He wasn't checked off?

A. We took the persons identification, either in the form of a locker key, a payroll slip or a police identification card. We required some form of reasonable proof that they are employees of a hotel.

Q. Do you have with you or does your counsel have a specimen ballot utilized in that election?

A. I don't.

Mr. Gramling: There is an affidavit attached to the answer. We have the affidavit of Mr. Gyson and the election committee attached to the answer.

The Witness: It is the same ballot as in the other elections.

Mr. Gramling: The affidavits are attached to this answer.

Mr. Davis: I am inquiring about a sample ballot.

Mr. Gramling: The sample ballot I don't have, nor is it attached here. It can be found in the DeLido Hotel file, No. 179407 and also in the McAllister, Biscayne Terrace and Miami Colonial files or we will supply you with one this afternoon.

Mr. Gettler: I believe I have a ballot here.

Mr. Davis: Thank you. At this time we move to strike the witness's previous testimony concerning the results [fol. 64] of the so-called strike election on the ground that

the ballots or the records are the best evidence of the results.

The Court: Sustained.

Mr. Gettler: Your Honor, we offer to prove that vote to your Honor as rapidly as it can be brought over here, if your Honor feels that is relevant. We were predicating the picketing on the refusal of the employer to participate——

Mr. Sibley: We agree it isn't relevant.

The Court: My views have been expressed and I think so clearly that anyone who reads may understand that the holding of an election in and of itself will not constitute establishing to the employers that the union has been designated by the employees as their bargaining agent. Whenever any election is held, State, County and National, the results of the election ought to be certified to the proper authorities.

The only evidence that developed in the other case as to acquainting the employers with the knowledge of what took place, what kind of an election it was and what the results were, they had to read the newspapers to find out.

Mr. Gettler: In this particular case we requested the employer ahead of time to join with us in holding an election. When an employer refuses then our contention is he is not acting as a reasonable employer and therefore, we have a right to go ahead and hold our own election, make our own determination, which we did in this case. [fol. 65] Mr. Herman has testified as a result of that election an overwhelming number of employees designated Local 255 as their bargaining agent. We are prepared in whatever possible way can be done to comply with your Honor's order in regard to proving to a reasonable employer that the union represents employees.

We are trying to do it by an election. If that is not sufficient, we don't know where to go from here, your Honor. In fact, we can certify on the record—we can bring over the ballots and certify before your Honor what the results are. We are also in our answer asking that your Honor appoint a Commissioner to hold——

The Court: Of course I haven't heard the evidence as to what the election was in this case. I heard it in the

other case. I know in that case what kind of an election it was and I don't know in this case what kind of an election it was.

Mr. Gettler: Mr. Herman testified it was a secret ballot election among employees to determine certain matters.

Mr. Sibley: It was the same election that they had before. They didn't hold a special election for this particular hotel and nobody contends it. They had some sort of——

Mr. Gettler: Is Mr. Sibley testifying?

Mr. Sibley: Let me finish. I didn't interrupt you. They had some sort of propaganda that they put out through [fol. 66] the newspapers that they were holding an election and then they announced the results of that election but there has been no election as contemplated by the Statute for a strike and there is no provision in the Statute which requires an election to appoint a bargaining agent.

I hold in my hands a record of a conference between Mr. Herman and myself in which I pointed out to him and where he was going to agree to a very sensible method of working out whether or not they represented the members of the Hotel. I agreed that Mr. Davis and Mr.——

The Court: Let's get on with the hearing.

Mr. Gettler: I would like to make this comment——

The Court: I don't want any more observations. I will hear the evidence. The objection to the last question is sustained. I can't permit counsel to occupy all the time by arguments that are of no avail.

I have expressed my views so clearly that nobody can misunderstand them. I think the views are reasonable, sensible and logical and if the union doesn't think so, I am sorry.

Mr. Gettler: We are trying to meet those views, your Honor, and I think the employer in this case should be estopped——

The Court: You can't meet them with such evidence as the results of an election which I heard in the other case.

Mr. Gettler: We claim an employer is estopped from questioning our election when they refuse in any way to [fol. 67] participate in the election.

The Court: That is your contention but not evidence and I will decide the case on the evidence and not on statements of counsel.

Mr. Davis: I have no further questions.

Redirect examination.

By Mr. Gettler:

Q. Mr. Herman, I will hand you a document entitled "Secret Ballot" and ask you if that is the ballot used in the election of May 25, 1955?

A. Yes, sir.

Mr. Gettler: I will offer this in evidence at this time.

Mr. Davis: Object on the grounds it is immaterial and irrelevant.

The Court: Overruled. Received and filed in evidence as Defendant's Exhibit A.

(The ballot was thereupon marked "Defendant's Exhibit A".)

Mr. Gettler: We rest in the Delmonico case, your Honor.

Mr. Davis: Call Harry Kazan in rebuttal.

[fol. 68] Thereupon—HARRY KAZAN was called as a witness by the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. Please state your name.

A. Harry Kazan.

Q. What connection, if any, do you have with the plaintiff in this suit—Hotel Delmonico, Inc.?

A. I am president of the company.

Q. Mr. David Herman testified that he had a conversation with you relative to a telegram that had been sent. Did you have a conversation with Mr. Herman?

A. Mr. Herman called Sam Rosen. They were paging him. He is my associate, and he wasn't there to take the call and I answered the call.

Q. About when was this?

A. I wouldn't recall the exact time, sometime in May.

Q. What was that conversation?

A. I asked who is calling. He said, "This is Dave Herman from Local 255, and I want to talk to Mr. Rosen." I said, "Can I help you?" And he says, "Yes," he says, "I got most of your employees signed up as members of my [fol. 69] union and I want to negotiate an agreement with you."

And I said, "Get in touch with Mr. Sibley; he is our attorney." And he says, "Why don't you get another attorney," he says, "that we can talk to but with Sibley you can't get anywheres." I said, "What do you want me to do—take your attorney to represent me? Mr. Sibley is my attorney, and if you want to negotiate an agreement, you will have to talk to Mr. Sibley."

Q. Did that end that conversation?

A. Yes.

Q. Is that the only conversation you had with Mr. Herman?

A. That is the only one.

Mr. Davis: You may inquire.

Mr. Gettler: No questions.

Thereupon—Sam Rosen, was recalled by the Plaintiff, and having been previously sworn, was examined and testified further as follows:

Redirect examination.

By Mr. Davis:

Q. You have previously testified in this suit, have you not, and been sworn?

A. Yes.

Q. Mr. Rosen, at any time during the conversation with [fol. 70] Mr. Herman, did he ever tell you or claim that he represented a majority of your employees?

A. Never did.

Q. Did you ever admit to him or concede to him that you knew he represented a majority?

A. How could I admit when I didn't operate the hotel April 20th.

Q. You didn't know?
A. I didn't know the personnel.

Mr. Davis: You may inquire.

Recross examination.

By Mr. Gettler:

Q. The conversation you are referring to is the conversation on April 20; is that correct?
A. April 19th.

Mr. Gettler: April 19th. No further questions.
Mr. Davis: That's all. We have no further testimony in rebuttal.
The Court: Has all the evidence so far been in the Delmonico case?
Mr. Davis: Yes, sir.
The Court: Both sides rest in that case and are ready to proceed with the other one.
Mr. Davis: Yes, sir.

[fol. 83] COURT'S ORAL OPINION

The Court: The picketing at each of the hotels will be enjoined for the reasons stated in my opinion and ruling on the motion to dissolve the injunctions in the other cases in denying the motions to dissolve the temporary injunctions or restraining orders entered in the cases numbered 180054, 180055 and 180056.

I wrote an opinion in those cases and that is the opinion [fol. 84] I refer to when I announce today that I would enjoin the picketing at the two hotels involved in these cases for the same reasons expressed in that opinion.

Mr. Davis: Would your Honor at this time entertain an application to fix the——

Mr. Gramling: Could we ask for a bond in the sum of $5,000 because if we are ever able to collect, I want to have something in the nature of attorneys' fees compatible with the effort that will have to go into making such a collection possible.

Mr. Sibley: It seems to me $2500 is sufficient bond.

The Court: What damage is the union going to suffer?

Mr. Gramling: Attorneys' fees for one thing.

The Court: Twenty-five hundred is sufficient. If it was sufficient in the other cases, it certainly ought to be sufficient in this case.

(Thereupon the hearing was concluded.)

[fol. 85] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 87]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180,374

HOTEL DELMONICO, a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

FINAL DECREE—November 30, 1955

This Cause coming on to be heard upon final hearing pursuant to the Stipulation of the parties to this cause, and it appearing to the Court that the defendants proffered the affidavit of Clarence Smith as evidence upon this final hearing, and plaintiff objected to said affidavit on the ground that the same is immaterial and irrelevant, and the Court sustains the objection thereto upon said grounds. The Court having considered the entire record in this cause, including the testimony taken before the Court, and the Court being fully advised in the premises,

It Is Thereupon Ordered, Adjudged and Decreed that the temporary restraining order heretofore rendered against the defendants, and each of them, which order is recorded in Chancery Order Book 1189, at Page 398, in the records of the Clerk of the Circuit Court of Dade

County, Florida, be and the same is hereby made perma-
[fol. 88] nent. The injunction bond filed herein is hereby cancelled and the principal and surety released of all liability thereunder. The costs of this cause hereby assessed in the sum of $354.66 are taxed against the defendants, for which let execution issue.

Done and Ordered in Chambers at Miami, Florida, this 30 day of November, 1955.

/s/ Vincent C. Giblin, Circuit Judge.

[fol. 89]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,374

HOTEL DELMONICO, INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255, (A. F. of L.) and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISHCEL, (sic) as Business Agents and Officers thereof, Defendants.

NOTICE OF APPEAL—Filed January 4, 1956

The defendants, Hotel Employees Union, Local No. 255, et al, take and enter their appeal to the Supreme Court of Florida to review the order, judgment or decree of the Circuit Court for Dade County, bearing date the 30 day of November, 1955, entered in the above styled cause and recorded in the records of said Court in Book 1214, Page 200, and all parties to said cause are called upon to take notice of the entry of this appeal.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, by Carrington Gramling.

[fol. 90]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY NO. 180,374

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 13, 1956

Come now the defendants by their undersigned solicitors and make the following assignments of error as the errors which they intend to rely upon in the Supreme Court of Florida, for a reversal of the Order (or Final Decree) made herein on the 30th day of November, 1955, and recorded in Chancery Order Book 1214, page 200 of the records of this Court, from which they have appealed:

1. The Court erred in enjoining the defendants in peaceful picketing the business place of the complainant, whereby your defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly, and the right to work or refrain from working as guaranteed within the meaning and scope of Sections I, XII, XIII, XVII and XIX, Declaration of Rights, Constitution of the State of Florida, and Amendments I, V, XIII and XIV of the Constitution of the United States of America.

2. The Court erred (in and by such final decree) in finding that the defendants should have established to the satisfaction of the employer, that the employees had chosen defendant Union as their representative and further requiring that the labor organization must also inform the employer of the object to be accomplished by picketing and afford an unwilling or hostile employer an unspecified [fol. 91] waiting period within which to engage in negotiations, all as a prerequisite to the right to strike and picket, whereby your defendants and the Union members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments I, V, XIII and XIV of the Constitution of the United States of America.

3. The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action

was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

5. The Court erred (in and by such final decree) in enjoining peaceful picketing and the dissemination of information predicated upon an unsubstantiated finding of fact, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

6. The Court erred in requiring a direct employer-employee relationship as a prerequisite to picketing and as a prerequisite to publicizing the existence of a labor dispute, contrary to Amendments 1 and XIV of the Constitution of the United States of America.

7. The Court erred (in and by such final decree) in permanently enjoining peaceful picketing and the publicizing of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefor, and beyond the scope of any finding of fact insubstantial [fol. 92] or otherwise, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

8. The Court erred (in and by such final decree) in finding that the action of striking and picketing was "precipitate" in the light of the surrounding facts and thereupon enjoining all possible picketing and all dissemination of information, thereby depriving the members of this Union the guarantees of Amendments I and IV of the Constitution of the United States.

9. The Court erred (in and by said final decree) in assessing costs against the defendants.

J. W. Brown, Gramling & Gramling, Solicitors for Defendants, by Carrington Gramling.

[fol. 93]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY 180,374-H

[Title omitted]

STIPULATION RE RECORD—Filed February 27, 1956

It Is Stipulated by and between solicitors for the respective parties that the record on appeal in the above entitled cause shall consist of the following:

Date of Filing	*Kind of Instrument*
June 9, 1955	Bill of Complaint
June 15, 1955	Answer and Affidavits
June 15, 1955	Plaintiff's Exhibit 1 & 2 Defendant's Exhibit A in Exhibit File
June 16, 1955	Temporary Restraining Order recorded in Chancery Order Book 1189, page 398
June 28, 1955	Supplemental Answer
November 30, 1955	Stipulation re Final Hearing and Affidavit of Clarence Smith
November 30, 1955	Final Decree recorded in Chancery Order Book 1214 Page 200

[fol. 94]

Date of Filing	*Kind of Instrument*
	Testimony
January 4, 1955	Notice of Appeal
January , 1956	Assignments of Error
January , 1956	This Stipulation
January , 1956	All Exhibits

Witness our hands at Miami, Dade County, Florida this 24th day of February, 1956.

Sibley & Davis, Attorneys for Plaintiff, by /s/ Thomas H. Barkdull, Jr.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, by Carrington Gramling.

[fol. 95] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 97]

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1957 DIVISION B

CASE NO. 28,255

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. OF L.), et al., Appellants,

v.

HOTEL DELMONICO, INC., a Florida corporation, Appellee.

An Appeal from the Circuit Court for Dade County, Vincent C. Giblin, Judge.

J. W. Brown and Gramling & Gramling, for Appellants.

Sibley & Davis and Thomas H. Barkdull, Jr., for Appellee.

OPINION PER CURIAM—Filed March 15, 1957

Affirmed on authority of Fontainebleau Hotel Corp. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., opinion filed February 1, 1957.

Terrell, C.J., Hobson, Drew and O'Connell, JJ., Concur.

[fol. 99]

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1957 DIVISION B

CASE NO. 28,255

HOTEL EMPLOYEES UNION, LOCAL 255 (A. F. OF L.), et al., Appellants.

v.

HOTEL DELMONICO, INC., a Florida corporation, Appellee.

JUDGMENT—March 15, 1957

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellees do have and recover of and from the Appellants their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

[fol. 108] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. A]

IN THE SUPREME COURT OF FLORIDA

Case No. 28,245

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al, Appellants,

v.

SAUL COHEN, SIDNEY RAFFEL, HERBERT ROBBINS, SAMUEL COHEN, d/b/a PRESIDENT MADISON HOTEL, Appellees.

Transcript of Record—Filed April 5, 1956

J. W. Brown and Gramling & Gramling, 226 Shoreland Building, Miami, Florida, Attorneys for Appellants.

Sibley & Davis, Thomas H. Barkdull, Jr., 605 Lincoln Road, Miami Beach, Florida, Attorneys for Appellees.

[fol. 1]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180373

SAUL COHEN, SIDNEY RAFFEL, HERBERT ROBBINS, SAMUEL COHEN, d/b/a President Madison Hotel, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

COMPLAINT FOR INJUNCTION AND OTHER RELIEF—
Filed June 9, 1955

Come Now the Plaintiffs, Saul Cohen, Sidney Raffel, Herbert Robbins, Samuel Cohen doing business as the

President Madison Hotel, by their undersigned attorneys, and bring this, their Complaint for Injunction and Other Relief against the Defendants, Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, and allege:

1) Plaintiffs are each residents of Dade County, Florida, and are each over the age of twenty-one (21) years.

Defendant, Hotel Employees Union, Local No. 255 (A. F. of L.) is a labor organization within the intent and purview of the laws of the State of Florida; Albert H. Berlin, Clarence L. Smith and Henry Mischel, are each residents of Dade County, Florida, and are each over the age of twenty-one (21) years; that said individual Defendants, and each of them, are the duly authorized business agents and officers of said labor organization.

[fol. 2] 2) Plaintiffs are the operators of the President Madison Hotel, which is an ocean-front hotel consisting of approximately 200 rooms, located at 3801 Collins Avenue, Miami Beach. Plaintiffs' possession is as lessees under and by virtue of a ten (10) year lease of the hotel, which lease expires in September, 1956. This Hotel has a reasonable value and worth of approximately Two Million Dollars ($2,000,000.00). Said Hotel has been in operation for approximately fifteen (15) years and the Plaintiffs operate in connection therewith a cocktail lounge, swimming pool, cabanas and other various facilities usual and necessary in the operation of a first-class hotel. Plaintiffs do not manage the dining-room of the Hotel nor hire its employees but have sub-leased the operation and management of said dining-room. The Plaintiffs' Hotel has enjoyed for many years the finest reputation and has earned an excellent and valuable good will and is nationally known and recognized as one of the leading hotels of Miami Beach, Florida. The Plaintiffs' Hotel business has become lucrative. It caters to the public by maintaining a dignified atmosphere, and by rendering superlative service to its patrons and guests.

3) Employed at the Plaintiffs' Hotel by Plaintiffs are approximately 60 employees who perform services as bell boys, maids, bartenders, and other similar duties normally

required to operate and maintain a first-class hotel. The Plaintiffs have had no labor dispute with their employees with regard to wages, working conditions or any other phase of employer-employee labor relationship existing between the Plaintiffs and their employees. The Plaintiffs have enjoyed the most cordial labor relations with their employees, and have at all times afforded to their employees a satisfactory standard of pay and working conditions. The Plaintiffs have received no complaints from their employees with reference to their wages, hours, or working conditions, and are wholly unaware of any labor dispute of any nature, character or description existing between them and their employees.

[fol. 3] 4) Plaintiffs believe and are informed that sometime early in 1955, one or two carpet-bagger organizers arrived in Miami Beach with the announced intention of stirring up labor discord between employers and employees at several of the hotels on Miami Beach, with the purpose in mind of creating for themselves, a lucrative labor organization by which said carpet-bagger organizers could reap a harvest of money from the employees of the hotels in Miami Beach through dues which the said organizers expected to charge said employees in the event they could inveigle said employees to join with said organizers in creating a labor union. These northern organizers announced that they intended to form a labor organization, and they have named their alleged organization, Hotel Employees Union, Local No. 255, A. F. of L. Said union had no members except the two professionals who arrived with the announcement that they constituted said labor organization.

Since said time, the two organizers, one of whom is David Herman, and the other is one of the defendants, Albert H. Berlin, have utilized all the pressure tactics known to labor organizers to force and intimidate the employees of the Plaintiffs to become members of said labor organization. Their efforts in enlisting membership have been a distinct failure, so the said professionals determined to place pressure, intimidation and threats upon the hotel owners, in order to force said hotel owners through economic sanctions,

to sign contracts with the said alleged organization, and thus use said contracts as a basis to force the employees of the hotels to become members of said alleged union.

To this end, said David Herman contacted Saul Cohen, as president of the Miami Beach Hotel Owners Association, and demanded that the said Cohen negotiate with and line up all of the owners of the first-class ocean-front hotels on Miami Beach, to execute labor contracts with the said alleged union, thus recognizing said union as representing the employees of the said hotels, and in this fashion, to en- [fol. 4] able the said union to procure membership among the employees of said hotels. Said Herman threatened Mr. Cohen by stating that unless the Hotel Association actively enlisted the hotel owners to join with the said union by giving it contracts as aforesaid, that the said David Herman would, through economic sanction such as picket lines around said hotels, cause them great economic loss, and thus force them, through such economic loss and pressure, to give to the said union contracts covering the employees in said hotels, who were not, in fact, members of or represented by the said alleged union in any fashion whatsoever. The Miami Beach Hotel Owners Association, and its president, had no power or authority to represent the owners of the individual hotels in reference to any labor matters involving the owners of any particular hotel.

5) The Plaintiffs have had no dealings whatsoever with any members of the Hotel Employees Union, Local No. 255, A. F. of L. Said union has never sought to negotiate with the Plaintiffs as a representative of Plaintiffs' employees; in fact, said union does not represent the vast majority of the Plaintiffs' employees. No labor controversy or negotiations with reference to any labor dispute has ever been instituted, inaugurated, or carried on between the Plaintiffs and the said alleged union, and the said union has never sought to bargain with the Plaintiffs as the alleged representative of Plaintiffs' employees.

6) The Plaintiffs have never refused to recognize the Defendant union, and have never refused to negotiate with said union; the Plaintiffs have never been requested by said union to negotiate with them and have never been

advised by the said union that the union is the bargaining agent for Plaintiffs' employees, nor have the Plaintiffs been advised by the said union that it is the labor organization representing Plaintiffs' employees. No demands or grievances of any nature, character or description whatsoever of the Plaintiffs' employees have up to the present time been made of or placed before the Plaintiffs.

7) On May 28th, Plaintiffs received a telegram purporting to be from Defendant Hotel Employees Union, Local [fol. 5] No. 255, stating:

> "We have been requested by certain of your employees who are members of this union that you join us in arranging a fair and impartial election to determine whether the majority of your employees in this unions jurisdiction desire to be represented by this union please advise us by 12 noon tomorrow whether you will so join and whether you will abide by the results of such an election."

The vast majority of Plaintiffs' employees did not and do not desire said Defendant union to represent them. Said union desired such an election as a means of coercing Plaintiffs' employees into joining their organization. Said union well knew that an election so held would be tantamount to recognition by Plaintiffs and a deprivation of Plaintiffs' employees' right to freely select their own bargaining agent. Plaintiffs could not conduct such an election with Defendant union as they would thereby be part of a conspiracy to pressure their employees into a choice of a particular bargaining agent.

8) Notwithstanding, said Defendant union, at 1:30 o'clock in the afternoon, on Tuesday, May 31st, 1955, placed a picket line consisting of five (5) or more pickets at the Plaintiffs' Hotel and place of business, and said pickets have seized and are occupying the property and premises of the Plaintiffs unlawfully and contrary to the laws of the State of Florida. And each of said pickets in said picket line carries and displays placards and posters which falsely and fraudulently seek to mislead and misinform the public

and Plaintiffs' employees of the Plaintiffs' position. Each of said placards carries the following statement:

> "This Hotel refuses to aid in determining its employees' bargaining agent. Join the union. Hotel Employees Union, Local #255, 1575 Washington Avenue, Miami Beach, American Federation of Labor."

Said statements are made for the purpose of deceiving the public and Plaintiffs. Said statements are made to divert normal business from the Hotel and cause strife and dissension among Plaintiffs' employees. The picket line was placed around the Plaintiffs' place of business for an unlawful and illegal purpose in that the Defendant union is carrying out its threat made to the President of the Miami Beach Hotel Owners Association by placing economic pres- [fol. 6] sure on the Plaintiffs, thereby seeking to cause the Plaintiffs, by loss of revenue thus occasioned, to execute a labor contract with the said union. This conduct of the said Defendant union is unlawful and is contrary to the Constitution and the laws of the State of Florida, in that the said Defendant union has never been certified to the Plaintiffs as the lawful bargaining agent of the Plaintiffs' employees, and said union has never approached the Plaintiffs seeking to bargain with the Plaintiffs as the authorized bargaining agent of the Plaintiffs' employees, and in that no demand for collective bargaining has ever been made by Plaintiffs' employees upon the Plaintiffs. Thus, the Defendant union, through its unlawful conduct, seeks to force the Plaintiffs to execute a contract with it in order that said union might utilize such contract to coerce and force Plaintiffs' employees into becoming members of said union.

9) The Defendant union is maintaining the picket line around the premises owned and operated by the Plaintiffs, and said picketing is unlawful and in violation of Paragraph 13, 447.09, Florida Statutes, in that said union maintains more than five pickets in the space surrounding the Plaintiffs' place of business. Said pickets have not engaged in peaceful or reasonable picketing, and the same has become unlawful in that the pickets maintaining the picket

line are attempting to stop patrons of Plaintiffs' Hotel from entering or leaving the premises, and are using abusive and obscene language, and are harassing and threatening the Plaintiffs' patrons and guests. The picketing is unlawful in that through it the Defendant union seeks to force Plaintiffs into signing a contract with the union although Plaintiffs may not legally sign such a contract since the Defendant union is not the authorized bargaining agent for Plaintiffs' employees.

The picketing is unlawful in that no employees of Plaintiffs have asked that the Defendant union represent them so that a election held under the auspice or joint auspices of Local No. 255 would be unlawful and a deprivation [fol. 7] of Plaintiffs' employees right to select their agent if they desire one without pressure, coercion, or selection by Plaintiffs. The picketing seeks to coerce Plaintiffs into conducting such an election with Defendant union.

10) The said union, through false and misleading picket banners, attempts to induce guests and patrons of the Plaintiffs' Hotel to leave and to create strife and dissension among Plaintiffs' employees, and through such fraudulent misrepresentations, Defendants seek to destroy the Plaintiffs' business and injure the Plaintiffs in the operation of their business. By reason of the unlawful conduct on the part of the Defendants, members of the public are being deterred and stopped from patronizing the Plaintiffs' place of business, which is causing Plaintiffs irreparable loss and damage. There is no method or means by which the exact loss may be determined and there is no method or means of determining the full damage caused by such false and fraudulent conduct of the said Defendant union.

11) The Defendant union and its representatives, threw up its picket line without notice or opportunity for the Plaintiffs to present its cause to the Court to determine the right of the union to cause Plaintiffs the damage they are presently suffering. The Plaintiffs are entitled to restoration of status quo ante by temporary injunction until such time as the court may have the opportunity to declare and determine whether or not the Defendant union is entitled to engage upon the conduct which is aimed at

destroying the Plaintiffs' business and utilizing in furtherance thereof the unlawful means aforesaid.

Forasmuch, Therefore, as Plaintiffs are without remedy in the premises, save and except in a Court of Equity, and to the end that justice may be done, Plaintiffs pray:

(a) That this Court temporarily enjoin and restrain the Defendant union forthwith from maintaining said pickets [fol. 8] or picket line at the Plaintiffs' place of business, and that the Court restore to Plaintiffs their status quo ante, pending a determination of the right of the Defendant union to picket the Plaintiffs' business.

(b) That this Court temporarily enjoin and restrain the Defendant union, and its agents, officers, representatives, servants and employees, including the Defendants, Albert H. Berlin, Clarence L. Smith and Henry Mischel, from picketing or causing to be picketed or aiding and abetting in the picketing or authorizing the picketing of Plaintiffs' place of business, or of advertising or publishing any false and scandalous statements in reference to the Plaintiffs' business, or their officers, agents, representatives and employees, or by any act or method of boycotting or injuring the same, either by picketing or otherwise.

(c) That this Court make such injunction permanent upon final hearing.

(d) That this Court grant such other and further relief as to it may seem meet and proper.

President Madison Hotel, By /s/ Sidney Raffel, General Manager.

Sibley & Davis, 605 Lincoln Road, Miami Beach, Florida, Attorneys for Plaintiffs, By /s/ Milton E. Grusmark, Of counsel.

Duly sworn to by Sidney Raffel, jurat omitted in printing.

[fol. 10]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180373

[Title omitted]

ANSWER—Filed before me this 15th day of June, 1955.
Vincent C. Giblin, Circuit Judge

Come Now the defendants and make this their answer to the Complaint and answering, say:

1. That they admit the identity of the parties hereto, as alleged in Paragraph 1.

2. That they are without knowledge as to the matters and things set forth in Paragraph 2, but aver that if the said hotel enjoys a fine reputation and valuable good will that such asset has been created in large measure by the excellence of performance by the many employees of said hotel while said employees are yet not recognized by the plaintiff through their duly designated representative of their own choosing, to-wit: Hotel Employees' Union Local No. 255; and that the purpose of this instant litigation is to deprive the said employees who have contributed so richly to the success of plaintiff hotel of their constitutional and statutory guarantees of being represented for collective bargaining purposes by representatives of their own choosing.

3. Defendants state there are substantially less than sixty employees employed by plaintiffs within the jurisdiction of the defendant union, and aver that the employees of plaintiff's hotel have long been dissatisfied with their wages, working conditions and other phases of the employer-employee labor relationship and aver that plaintiff has suffered a large turnover in the employees because of the substandard rate of pay, working conditions, adjustment of grievances and other inter-related factors; and would aver [fol. 11] that the many complaints on the part of the employees have been properly brought to the representatives of their own choosing as guaranteed by law, to-wit: Hotel

Employees' Union Local No. 255, A. F. of L.; but that plaintiff hotel has at all times refused to negotiate or settle the many differences and grievances existing and under which the employees are now suffering. Further answering, the defendants deny each and every allegation of Paragraph 3 of the complaint, not herein specifically admitted.

4. Defendants deny each and every the material allegations, if any, of Paragraph 4 as though each such allegation was herein set forth and severally and categorically denied, except, however, that defendants admit that Saul Cohen, one of the plaintiffs herein, is President of the Miami Beach Hotel Owners' Association and that David Herman, as organizer for defendant union, did contact plaintiff Saul Cohen, acting in each and all of his capacities including acting as an owner of the President Madison Hotel and as an owner of the Casablanca Hotel and in any other hotel in which he had an interest, either as an owner operator or otherwise. Mr. Cohen was also contacted in his capacity as President of the Miami Beach Hotel Association. Said David Herman did contact the said Saul Cohen for the purpose of advising said Saul Cohen that defendant union did represent employees of the various hotels with which the said Saul Cohen was connected and was the duly designated collective bargaining representative of a substantial number of such employees. Defendants further state that the said Saul Cohen did agree with the said David Herman and admit such representation. Defendants further state that said David Herman did endeavor to negotiate with said plaintiff, Saul Cohen, advised said plaintiff of the object of defendant union and did afford to plaintiffs a fair opportunity to engage in negotiations.

5. Defendants deny each and every material allegation of Paragraph 5 as though each allegation was herein set forth and severally and categorically denied.

6. Defendants deny each and every material allegation of Paragraph 6 as though each allegation was herein set forth and severally and categorically denied.

7. Defendants admit that on May 28, 1955, plaintiffs received a telegram from defendant union, stating:

[fol. 12] "We have been requested by certain of your employees who are members of this union that you join us in arranging a fair and impartial election to determine whether the majority of your employees in this unions jurisdiction desire to be represented by this union please advise us by 12 noon tomorrow whether you will so join and whether you will abide by the results of such an election".

Defendants further state that all of the statements of fact contained in the aforesaid telegram were and are true. Defendants further state that the defendant union did and does represent a substantial number of plaintiff's employees and in fact a majority of such employees. Defendants by said telegram, suggested a fair and impartial method to demonstrate to plaintiff employers what the wishes of its employees are. A fair and impartial election could not possibly be a means of coercing plaintiff's employees into joining defendant union. Defendants aver that plaintiff's failure and refusal to agree to such an election is specious, unreasonable, arbitrary and capricious. A fair and impartial election is a justifiable and democratic means of determining the wishes of free persons. That the foregoing telegram must be considered in para materia with the verbal requests, entreaties and supplications of spokesmen on behalf of Local No. 255, soliciting recognition on behalf of the employees of the said Saul Cohen, et al, represented by defendant union; that said telegram was no new thing to the said Saul Cohen and associates for that in addition to the conversations between Saul Cohen and representatives of the union, the said Saul Cohen has consistently and repeatedly appeared in the Circuit Court of the 11th Judicial Circuit as a spectator and as a party and as a witness in the litigations involving some twenty hotels on Miami Beach and that the said Saul Cohen cannot be heard to say that the aforesaid telegram came as any surprise, but rather as a culmination of months of entreaties by the union and knowledge of the union's representation and purposes in the matter. Further answering, defendants deny each and every allegation of Paragraph 7 of plaintiff's complaint not herein specifically admitted.

8. Defendants state that because of plaintiff's failure and refusal to aid in determining the employees' wishes as to [fol. 13] bargaining agent, peaceful picketing of the President Madison did commence on the 31st day of May, 1955; that said pickets carried banners setting forth the truth of the dispute between the parties; said banners carried the language set forth in Paragraph 8 of plaintiff's complaint. Defendants deny each and every of the material allegations of Paragraph 8, not herein specifically admitted as fully and completely as though they were each herein set forth and each categorically and severally denied.

9. Defendants deny each and every of the material allegations of Paragraph 9 as fully and completely as though they were each herein set forth and each categorically and severally denied.

10. Defendants deny each and every of the material allegations of Paragraph 10 as fully and completely as though they were each herein set forth and each categorically and severally denied.

11. Defendants are without knowledge of any law of the State of Florida, or otherwise, which would require notice or opportunity for the plaintiff to present its cause to the Court prior to any picketing, and is without knowledge of any law that requires a declaratory judgment as a condition precedent to picketing which is conducted for the purpose of inducing the employer to deal with the representative of plaintiff's employees.

12. And your defendants would show that the plaintiff seeks to maintain this litigation in a court of equity and good conscience with unclean hands, for that the plaintiff has denied to its many employees the statutory and constitutional guarantees of representation and collective bargaining as afore set forth and are endeavoring to frustrate and to bring to naught the provisions of the aforesaid statutory constitutional clauses and enactments, contrary to equity and good conscience.

That your defendant union as the spokesman and representative of its members who are employed by plaintiff, has long sought to bring about negotiations and the plaintiff

has failed and refused to respond to the invitations and solicitations of this defendant union, acting on behalf of its members and that the picketing became necessary in order to appeal to the friends and sympathizers of the members of defendant union who are employed by plaintiff, as aforesaid; that in the utmost of good faith, your defendant union has invited plaintiff to hold an election by secret [fol. 14] ballot under any fair and impartial authority and by such secret ballot, demonstrate to plaintiff the bona fides of defendant union's assertion concerning representation.

That plaintiff seeks to deprive these defendants and the members of defendant union of the constitutional guarantee of freedom of speech, as provided for in Article 1 and 14 Bill of Rights, Constitution of the United States of America and the similar provisions of the Declaration of Rights of the Constitution of the State of Florida, and the guarantee of Chapters 447.03 and 447.13 Laws of the State of Florida.

And defendants would respectfully show unto this Honorable Court that the allegations of the complaint and the prayer for relief in said complaint predicated upon the allegations therein seek only to deprive your defendants of their constitutional guarantees of freedom of speech and to impose upon the individual members of the defendant union an involuntary servitude contrary to the provisions of the 1st, 13th and 14th Amendments of the Constitution of the United States of America. Granting the prayer of plaintiff's petition would result in abridging and depriving of these defendants and each and every member of defendant union and each and every person enjoined of his or her Constitutional right to speak freely his opinions and to communicate facts and to refrain from working individually or in concert with others, contrary to the aforesaid Constitutional provisions. Defendants further state that in the event the provisions of any Statute of the State of Florida are applied to the facts of this instant cause so as to grant the relief prayed for by the plaintiffs, the same would result in the denying to these plaintiffs, all members of the defendant union, and all other persons enjoined the guarantees of the Constitution of the United

States and of the Constitution of the State of Florida, as aforesaid.

Wherefore, your defendant union prays this Honorable Court that should this Honorable Court desire to ascertain the fact of the representation by defendant union through the process of the Court, that a Commissioner be appointed to hold an election among the plaintiff's employees, to ascertain and report to this Honorable Court the truth and accuracy of the statements in plaintiff's petition as to the representation by defendant union of employees of [fol. 15] plaintiffs and that this Honorable Court enter its Declaratory Decree, declaring this union to be in fact the duly authorized representative of the majority of plaintiff's employees within the jurisdiction of defendant union, and that upon judicial ascertainment and Declaratory Decree, that this Honorable Court by its mandatory injunction, require the plaintiff to negotiate and bargain in good faith with this union on behalf of the members of the union, who are the employees of plaintiff, as is contemplated by Chapter 447 of the Laws of the State of Florida, together with Section 12 of the Bill of Rights, Constitution of the State of Florida and to deny the relief sought in the original complaint.

Gramling & Gramling, J. W. Brown, Ben Gettler, Solicitors for Defendants, By Carrington Gramling, 224 Shoreland Building, Miami, Florida.

Duly sworn to by Clarence L. Smith, jurat omitted in printing.

Certificate of service (omitted in printing).

[fol. 16]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,373

SAUL COHEN, SIDNEY RAFFEL, HERBERT ROBBINS, SAMUEL COHEN, d/b/a PRESIDENT MADISON HOTEL, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

TEMPORARY RESTRAINING ORDER—June 16, 1955

This Cause has been heard after due notice on plaintiffs' application for interlocutory injunctive relief, and the Court has heard and considered the proofs submitted in support of and in opposition to such application.

The Court is guided and governed by the opinion of the Supreme Court of Florida filed May 27, 1955, in Sax Enterprises, Inc. versus Hotel Employees Union, Local No. 255 (A. F. of L.), et al., as the same was applied in my opinion and order filed June 10, 1955, in McAllister Hotel, Inc. versus Hotel Employees Union, Local No. 255 (A. F. of L.), et al. (Chancery Cause Numbered 180,054), Biscayne Terrace Hotel, Inc. versus Hotel Employees Union, Local No. 255 (A. F. of L.), et al (Chancery Cause Numbered 180,055), and Abe Allenberg, et al., doing business as Miami Colonial Hotel versus Hotel Employees Union, Local No. 255 (A. F. of L.) et al (Chancery Cause Numbered [fol. 17] 180,056). Under the principles therein enunciated the picketing is unlawful.

Accordingly, It Is Ordered and Decreed that the defendants, Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, their agents, servants, employees, and all persons acting in concert or

participation with them, be and they are, and each of them is, restrained and enjoined until the further order of this Court from picketing the plaintiffs' place of business located at 3801 Collins Avenue, Miami Beach, Florida.

The plaintiff shall, within four days from this date, furnish and file a good and sufficient bond in the penal sum of $2,500.00, payable to the defendants, with surety or sureties to be approved by the Clerk, conditioned to pay all damages and costs which the defendants shall suffer or incur as a result of the wrongful application for this order should it be determined that such application was wrongful.

Done and Ordered in the Courthouse, Dade County, Florida, at Miami, June 16, 1955.

Vincent C. Giblin, Circuit Judge.

[fol. 18]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

In Chancery No. 180,373

[Title omitted]

SUPPLEMENTAL ANSWER—June 28, 1955

Come Now the defendants and make this their Supplemental Answer and would respectfully show unto this Honorable Court that this Court is without jurisdiction to act in the cause for the reason that the plaintiffs in operation of said hotel are engaged in a business which affects inter-state commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state buslines, inter-

state and international steamship companies a id by passenger automobiles.

Said business further is part of "package deal" arrangements with said various inter-state and intern ational airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Trans-World Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular & Occidental Steamship Company, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coast Line Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus [fol. 19] line companies including Greyhound Bus Line Company, Trailways Bus System and various other inter-state bus line companies. Said "package deal" arrangements are arrangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by plaintiffs and said inter-state carriers. All expenses incurred in promoting, making and consummating said inter-state and international sales are jointly shared by plaintiffs and said inter-state and international carriers. The proceeds of said inter-state and international sales are divided between plaintiffs as operator of said hotel and said inter-state and international carriers.

Said plaintiffs, as a part of the operation of said hotel, purchase numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said plaintiffs as a part of the operation of said hotel sell directly outside of the State of Florida and within the State of Florida for carriage or resale outside of the State of Florida.

Said plaintiffs as part of the operation of said hotel advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the states of the United States outside of the State of Florida and in various countries outside of the United States.

Plaintiffs as part of the operation of said hotel have on said premises various shops and services engaged in inter-state commerce including Western Union Telegraph services, numerous travel agencies, transportation offices for airlines, steamship lines, railroad companies and bus lines, inter-state stock exchange branches, inter-state chain drug stores, inter-state clothing stores and other inter-state retail stores.

Defendants further state that said hotel is part of a multi-state chain, said entire chain being engaged in inter-state commerce, so that labor disputes at plaintiffs' hotel affects inter-state commerce.

Defendants further state that the Congress of the United States has by legislative enactment under the Constitution of the United States, occupied the fields as to all matters [fol. 20] complained of in the petition of plaintiffs and this State Court has no jurisdiction to act in the premises wherefore the said cause should be dismissed for lack of jurisdiction.

Gramling & Gramling, J. W. Brown, Ben Gettler,
By Carrington Gramling, 224 Shoreland Building,
Miami, Florida, Solicitors for Defendants.

Certificate of service (omitted in printing).

[fol. 22]

In the Circuit Court of the 11th Judicial Circuit of Florida, in and for Dade County.

In Chancery No. 180373

[Title omitted]

Stipulation Re Final Hearing—Filed November 30, 1955

It Is Stipulated by and between counsel for the respective parties that all testimony and other evidence heretofore

introduced in this case, be and the same is hereby reaffirmed for the purpose of final hearing, with the addition, however, that at said final hearing the defendants would produce Clarence Smith, who would testify according to the Affidavit attached hereto.

It Is Further Stipulated that Defendants would produce the signatories of the designation cards, attached hereto, who would severally testify that "they have designated Hotel Employees Union #255 as their collective bargaining agent; that they have each requested the Union to negotiate on their behalf with the employer in all matters dealing with wages, hours, and conditions of employment. The witnesses would also testify that such designation was prior to the commencement of picketing unless the cards show otherwise.

It Is Further Stipulated that the defendants would produce Clarence Smith as a witness, who would further testify according to his second affidavit attached hereto, and it is

Stipulated that said testimony concerning inter-state commerce would be objected to on the grounds that such testimony is immaterial and irrelevant, and it is

[fol. 23] Stipulated that this testimony of Clarence Smith and the objections thereto be submitted to the Chancellor for ruling thereon, and in the event the objection is sustained, the affidavit of Clarence Smith shall remain as part of the record as a proffer, and all objections as to form of such proffer be, and they are hereby waived.

It Is Further Stipulated that final decree be entered by the Chancellor upon the record as now made in the light of this stipulation.

Witness our hands at Miami, Dade County, Florida, this 30 day of November, 1955.

Sibley & Davis, Attorneys for Plaintiff, By /s/ Marion Sibley.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By /s/ Carrington Gramling.

[fol. 24]

No. 180,373

AFFIDAVIT OF CLARENCE SMITH FOR DEFENDANTS

State of Florida,
County of Dade, ss.:

Before me, the undersigned authority, this day personally appeared Clarence Smith, who being by me first duly sworn, deposes and says as follows:

"My name is Clarence Smith, and I am a resident of Dade County, Florida and have been for approximately 22 years; that I am an Organizer and Officer of the Hotel Empioyees' Union, Local #255 and that as a part of my duties I have charge of the cards signed by various "service employees" in the hotel industry in and about Miami Beach; that in the due course of the affairs of my office there have been presented to me 34 cards signed by employees of the President Madison Hotel designating the Hotel Employees' Union, Local #255 as their respective bargaining agents; that the 34 cards submitted to this Honorable Court herewith were freely and voluntarily delivered to me in due course in the operation of my office. Many were signed in my presence, many were mailed in and others were brought [fol. 25] to me by employees of the Union, but all of these cards came to me in due course of business; that should the Court desire, I will assist in causing the 34 signatories to personally be and appear before this Honorable Court to testify as to the authenticity of the cards.

Further affiant sayeth not.

/s/ Clarence Smith

Sworn to and subscribed before me, this 15 day of Nov., 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large.

My commission expires: Aug. 20, 1959.

(Seal)

[fol. 26]

No. 180373

AFFIDAVIT OF CLARENCE SMITH FOR DEFENDANTS

Personally appeared before me the undersigned authority Clarence Smith, who being by me first duly sworn deposes and says as follows:

"My name is Clarence Smith, and I am Business Agent with Hotel Employees Union, Local 255 duly licensed under the laws of the State of Florida and have been a resident of Dade County, Florida for the past 22 years. That plaintiffs, in the operation of their hotel are engaged in a business which affects interstate commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida, and from various countries outside of the United States by various interstate and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state bus lines, inter-state and international steamship companies, and by passenger automobiles. Said business further is part of "package deal" arrangements with said [fol. 27] various inter-state and international airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Transworld Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular and Occidental Steamship Companies, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coastline Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus lines companies including Greyhound Bus Lines Company, Trailways Bus System and various other inter-state bus line companies. Said "package deals" arrangements are arrangements whereby persons in states other than the

State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an intergral (sic) part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by Plaintiffs and said inter-state carriers. All expense incurred in promoting, making and consummating said inter-state and inter-national sales are jointly shared by Plaintiffs, and said inter-state and international carriers. The proceeds of said inter-state and inter-national sales are divided between Plaintiff, as operator of said hotel and said inter-state and international carriers; said sales of Plaintiff in inter-state commerce exceed in volume amount sufficient to establish Jurisdiction of National Labor Relations Board under its rules and regulations.

Said plaintiffs, as a part of the operation of said hotel, purchases numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said Plaintiffs, as a part of the operation of said hotel, sell directly outside of the State of Florida and within the State of Florida for carriage or re-sale outside of the State [fol. 28] of Florida. Said plaintiffs as part of the operation of said hotel, advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the States of the United States outside the State of Florida and in various countries outside of the United States.

Further affiant sayeth not.

/s/ Clarence Smith, Affiant.

Sworn to and subscribed before me this 15th day of November, 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large.

My Commission Expires: Aug. 20, 1959.

(Seal)

[fol. 29]

CLERK'S NOTE:

	Pages
Plaintiff's Ex. 1—Telegram	28
Defendant's Ex. "A"—White, Official Ballot Slip.	29
Joint Ex. "B"—Carbon copy of Lease of Dining Room Concession	30-35
Brown envelope containing Sixteen (16) yellow, singed (sic) cards and eighteen (18) white signed cards.	36

are missing from this record. Originals transmitted to Supreme Court with original record.

[fol. 30]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

In Chancery No. 180,373-G

SAUL COHEN, SIDNEY RAFFEL, HERBERT ROBBINS, SAMUEL COHEN, d/b/a PRESIDENT MADISON HOTEL, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, Defendants.

FINAL DECREE—November 30, 1955

This Cause coming on to be heard upon final hearing pursuant to the Stipulation of the parties to this cause, and it appearing to the Court that the defendants proffered the affidavit of Clarence Smith as evidence upon this final hearing, and plaintiffs objected to said affidavit on the ground that the same is immaterial and irrelevant, and the Court sustains the objection thereto upon said grounds. The Court having considered the entire record in this cause,

including the testimony taken before the Court, and the Court being fully advised in the premises,

It Is Thereupon Ordered, Adjudged and Decreed that the preliminary injunction heretofore rendered against the defendants, and each of them, which injunction is recorded [fol. 31] in Chancery Order Book 1189, at Page 396, in the records of the Clerk of the Circuit Court of Dade County, Florida, be and the same is hereby made permanent. The injunction bond filed herein is hereby cancelled and the principal and surety released of all liability thereunder. The costs of this cause hereby assessed in the sum of $149.12 are taxed against the defendants, for which let execution issue.

Done and Ordered in Chambers at Miami, Florida, this 30th day of November, 1955.

/s/ Vincent C. Giblin, Circuit Judge.

[fol. 32]

In the Circuit Court of the 11th Judicial Circuit, in and for Dade County, Florida

In Chancery No. 180,373

[Title omitted]

Notice of Appeal—Filed January 4, 1956

The defendants, Hotel Employees Union, Local No. 255, et al., take and enter their appeal to the Supreme Court of Florida to review the order, judgment or decree of the Circuit Court for Dade County, bearing date the 30 day of November, 1955, entered in the above styled cause and recorded in the records of said Court in Book 1214, Page 202, and all parties to said cause are called upon to take notice of the entry of this appeal.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By Carrington Gramling.

[fol. 33]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

In Chancery No. 180,373

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 13, 1956

Come now the defendants by their undersigned solicitors and make the following assignments of error as the errors which they intend to rely upon in the Supreme Court of Florida, for a reversal of the Order (or Final Decree) made herein on the 30th day of November, 1955, and recorded in Chancery Order Book 1214, page 202 of the records of this Court, from which they have appealed:

1. The Court in enjoining the defendants in peaceful picketing the business place of the complainants, whereby your defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly, and the right to work or refrain from working as guaranteed within the meaning and scope of Sections I, XII, XIII, XVII and XIX, Declaration of Rights, Constitution of the State of Florida, and Amendments I, V, XIII and XIV of the Constitution of the United States of America.

2. The Court erred (in and by such final decree) in finding that the defendants should have established to the satisfaction of the employer, that the employees had chosen defendant Union as their representative and further requiring that the labor organization must also inform the employer of the object to be accomplished by picketing and [fol. 34] afford an unwilling or hostile employer an unspecified waiting period within which to engage in negotiations, all as a prerequisite to the right to strike and picket, whereby your defendants and the Union members became disenfranchised from the exercise of their constitutional guarantee of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments I, V, XIII and XIV of the Constitution of the United States of America.

3. The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

5. The Court erred (in and by such final decree) in enjoining peaceful picketing and the dissemination of information predicated upon an unsubstantiated finding of fact, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

6. The Court erred in requiring a direct employer-employee relationship as a prerequisite to picketing and as a prerequisite to publicizing the existence of a labor dispute, contrary to Amendments I and XIV of the Constitution of the United States of America.

[fol. 35] 7. The Court erred (in and by such final decree) in permanently enjoining peaceful picketing and the publicizing of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefor, and beyond the scope of any finding of fact insubstantial or otherwise, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

8. The Court erred (in and by such final decree) in finding that the action of striking and picketing was "precipitated" in the light of the surrounding facts and thereupon enjoining all possible picketing and all dissemination of information, thereby depriving the members of this Union the guarantees of Amendments I and IV of the Constitution of the United States.

9. The Court erred (in and by said final decree) in assessing costs against the defendants.

J. W. Brown, Gramling & Gramling, Solicitors for Defendants, By Carrington Gramling.

[fol. 36]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

In Chancery No. 180,373-G

[Title omitted]

STIPULATION RE RECORD—Filed February 27, 1956

It Is Stipulated by and between solicitors for the respective parties that the Record on Appeal in the above entitled cause shall consist of the following:

Date of Filing	*Kind of Instrument*
June 9, 1955	Bill of Complaint
June 15, 1955	Answer
June 16, 1955	Temporary Restraining Order recorded in Chancery Order Book 1189, page 396
June 28, 1955	Supplemental Answer
November 30, 1955	Stipulation Re Final Decree and Affidavits of Clarence Smith
November 30, 1955	Final Decree recorded in Chancery Order Book 1214 page 202
January 4, 1956	Notice of Appeal

[fol. 37]

January , 1956	Assignments of Error
January , 1956	This Stipulation
January , 1956	All Exhibits

It Is Further Stipulated that the Transcript of Testimony is included in that of Delmonico Hotel, Inc., vs. Hotel Employees Union, Chancery Number 180,374.

Witness our hands at Miami, Dade County, Florida this 24 day of February, 1956.

Sibley & Davis, Attorneys for Plaintiff, By Thomas H. Barkdull, Jr.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By Carrington Gramling.

[fol. 38] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 40]

IN THE SUPREME COURT OF FLORIDA

January Term, A. D. 1957

Division B.

Case No. 28,245

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

SAUL COHEN, SIDNEY RAFFEL, HERBERT ROBBINS, SAMUEL COHEN, d/b/a PRESIDENT MADISON HOTEL, Appellees.

An Appeal from the Circuit Court for Dade County, Vincent C. Giblin, Judge.

J. W. Brown and Gramling & Gramling, for Appellants.

Sibley & Davis and Thomas H. Barkdull, Jr., for Appellees.

OPINION PER CURIAM—Filed March 15, 1957

Affirmed on authority of Fontainebleau Hotel Corp. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., opinion filed February 1, 1957.

TERRELL, C.J., HOBSON, DREW and O'CONNELL, JJ., Concur.

[fol. 42]

IN THE SUPREME COURT OF FLORIDA

January Term, A. D. 1957

Division B.

Case No. 28,245

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

SAUL COHEN, SIDNEY RAFFEL, HERBERT ROBBINS, SAMUEL COHEN, d/b/a PRESIDENT MADISON HOTEL, Appellees.

JUDGMENT—March 15, 1957

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellees do have and recover of and from the Appellants their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

[fol. 44]

IN THE SUPREME COURT OF FLORIDA

Book 1285 Page 74

MANDATE FROM SUPREME COURT OF FLORIDA—April 1, 1957

To the Honorable, the Judges of the Circuit Court for the Eleventh Judicial Circuit of Florida. Greeting:

Whereas, Lately in the Circuit Court of The Eleventh Judicial Circuit, In And for the County of Dade in a cause wherein

Saul Cohen, et al, were plaintiffs

and

Hotel Employees Union, Local No. 255 (A. F. of L.), et al, were defendants

(Circuit Court #180373—Chancery)

the Decree of said Circuit Court was rendered Nov. 30, 1955 as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

And Whereas, at the January Term of the Supreme Court holden at Tallahassee, A. D. 1957, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 15th day March A. D. 1957 the said Supreme Court rendered its opinion and judgment in said cause as per copy thereof hereto attached and made a part hereof.

In Consideration Whereof, It Is Ordered by the Court that the Appellees do have and recover of and from the Appellants costs in this behalf expended herein taxed except the $12.00 filing fee which has been paid by the Appellants. and that all other costs shall be taxed in the court in which the appeal was entered, therefore.

You Are Hereby Commanded, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Decree of the Circuit Court notwithstanding.

Witness, The Honorable Glenn Terrell Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 1st day of April 1957

/s/ Gwyte P. McCord, Clerk Supreme Court of Florida.

(Seal)

Filed this 2 day of April A. D. 1957
recorded this 4 day of Apr A. D. 1957
in Chancery Order Book 1285 on
Page 74

E. B. Leatherman,
Clerk Circuit Court
By /s/ G . C. SHAFFER D. C.

[fol. 51] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. A]

IN THE SUPREME COURT OF FLORIDA

CASE NO. 28,238

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al, Appellants,

—v.—

MORRIS LANSBURGH and DANIEL LIFTER, Appellees.

Transcript of Record—Filed April 5, 1956

J. W. Brown and Gramling & Gramling, 226 Shoreland Building, Miami, Florida, Attorneys for Appellants.

Sibley & Davis, Thomas H. Barkdull, 605 Lincoln Road, Miami Beach, Florida; Patton & Kanner, 213 Shoreland Building, Miami, Florida, Attorneys for Appellees.

[fol. 1]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180412

MORRIS LANSBURGH and DANIEL LIFTER, Plaintiffs,

—v.—

HOTEL EMPLOYEES UNION, LOCAL NO. 255, of the AMERICAN FEDERATION OF LABOR, and DAVID HERMAN, CLARENCE L. SMITH, ALBERT H. BERLIN and HENRY K. MICHEL, individually and as business agents and officers thereof, Defendants.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF—
Filed June 9, 1955

To the Honorable Judges of the Above Styled Court In Chancery Sitting:

Come now the Plaintiffs, Morris Lansburgh and Daniel Lifter, by their undersigned attorneys, Sibley & Davis and

Patton & Kanner, and bring this their bill of complaint for injunctive and other relief against the Defendants, Hotel Employees Union, Local No. 255, of the American Federation of Labor, and David Herman, Clarence L. Smith, Albert H. Berlin and Henry K. Michel, individually and as business agents and officers thereof, and allege:

1. That the Plaintiffs, Morris Lansburgh and Daniel Lifter, are residents of the County of Dade and State of Florida. That the Defendant, Hotel Employees Union, Local No. 255 of the American Federation of Labor, is a labor organization within the intent and purview of the laws of the State of Florida. That the Defendants, David Herman, Clarence L. Smith, Albert H. Berlin and Henry K. Michel, are each residents of Dade County, Florida, and are each over the age of twenty-one years, and that the said Defendants, David Herman, Clarence L. Smith, [fol. 2] Albert H. Berlin and Henry K. Michel, and each of them, are duly authorized business agents and officers of the Defendant, Hotel Employees Union, Local No. 255.

2. That the Plaintiffs, Morris Lansburgh and Daniel Lifter, are the owners of a leasehold interest in the Robert Richter Hotel and Cabana Club, the same being located at 3301 Collins Avenue, Miami Beach, Florida. That the Plaintiffs operate the said Robert Richter Hotel under and by virtue of the terms and conditions of a lease indenture, under which they are obligated to pay a minimum rental of $135,000.00 a year, plus a percentage of the gross income derived from the operation of the hotel to the owner of the fee simple title upon which the said hotel is situated, to wit, Robert Richter Hotel, Inc. That under and by virtue of the terms and conditions of said lease indenture the Plaintiffs have a security deposit of $200,000.00 posted with the lessor, Robert Richter Hotel, Inc. to guarantee all of the lessee obligations under the terms and conditions of the lease. That the Robert Richter Hotel is a first-class, deluxe, luxury hotel located on the shores of the Atlantic Ocean in the City of Miami Beach, Florida, in the heart of the hotel district commonly known as "King's Row". That the Robert Richter Hotel is a multiple-storied building

consisting of 148 rooms, as well as dining rooms, card rooms, lobbies, sitting rooms, cocktail lounges and a cabana club. That the said premises are well known and recognized throughout the world as a first-class luxury resort hotel. That the reputation, character and facilities of the Robert Richter Hotel have been widely publicized and are well known throughout the world as those of a first-class luxury resort hotel, catering to travelers, residents, tourists and vacationers from the world-over. That there is operated in conjunction with the Robert Richter [fol. 3] Hotel a cabana club consisting of 18 cabanas, a swimming pool and luxurious public space, said cabana club being managed and operated by the Plaintiffs in connection with and as an adjunct of the Robert Richter Hotel. That the value of the Plaintiffs' leasehold interest is in excess of $1,000,000.00 and as such is a valuable asset. That if the Plaintiffs are unable to continue the rental payments which they are obligated to pay, the security deposit of $200,000.00 hereinabove alleged will be jeopardized under the terms and conditions of the lease indenture under which these Plaintiffs operate the Robert Richter Hotel. That the Plaintiffs in the operation of the Robert Richter Hotel and its facilities employ approximately 76 employees. That the said Plaintiffs operate the Robert Richter Hotel and its facilities throughout the entire year and in such operation have accepted and confirmed reservations from guests, who anticipate the use of the hotel and its facilities throughout a period of time in excess of six months from the date of the filing of this complaint. That the individuals who have reservations at the Robert Richter Hotel are relying upon and anticipating the use of its facilities for which they have confirmed reservations.

3. That as reflected by the payroll of the Robert Richter Hotel on June 7, 1955, the Plaintiffs employed 76 employees who rendered services as waiters, bell boys, maids, elevator operators and telephone operators, and other similar duties normally required to operate and maintain a hotel of the character and nature as that of the Robert Richter Hotel hereinabove described. That the Plaintiffs in their operation of the Robert Richter Hotel have not had and do

not now have any labor dispute with their employees with regard to wages, working conditions or any other phase of employee-employer relationship, but, on the contrary, the said Plaintiffs have enjoyed the most cordial labor relations with their employees and have at all times af- [fol. 4] forded their employees a satisfactory standard of pay, hours of work, and working conditions. That the Plaintiffs have received no complaints from their employees with reference to wages, hours or working conditions, and are wholly and completely without any knowledge of any labor dispute of any kind or nature whatsoever existing between them and their employees. That more than a majority of Plaintiffs' employees are non-members of the defendant union and that more than a majority of the Plaintiffs' employees have no desire to join the defendant union. That the defendant union does not represent a majority of the said Plaintiffs' employees.

4. That the Defendants, in order to create for their own use and benefit a lucrative labor organization, organized the Defendant, Hotel Employees Union, Local No. 255 of the American Federation of Labor. That the defendants have used the said defendant labor organization as an instrumentality to instigate and create labor disputes between the Plaintiffs and their employees, and among other hotels and employees. That the Defendant labor organization and the individual agents and officers herein named as defendants have attempted to solicit the employees of the Robert Richter Hotel to become members of the defendant labor organization, and in such solicitation have used devices and means contrary to the laws of the State of Florida. That the said Defendants, in order to carry out its illegal purposes, have intimidated, coerced and threatened the Plaintiffs and their employees. That the Defendants have attempted to obtain recognition as a bargaining agent for the employees of the Robert Richter Hotel, although not in fact representing a majority of the employees of the Robert Richter Hotel. That the Defendant union professes to represent a small minority of the Robert Richter Hotel's employees and has established and set up a device of picketing the Robert Richter Hotel in order to

[fol. 5] force the recognition of the defendant as a bargaining agent of the Robert Richter Hotel employees. That the picketing engaged in by the defendants is contrary to the laws of the State of Florida in that such picketing is carried on in an intimidating and threatening manner and is set in a background of coercion and violence, and in addition thereto is calculated to carry out an illegal purpose, that of forcing the Plaintiffs to recognize the defendants as bargaining agents for employees which the defendants do not represent.

5. That the Plaintiffs do not have a contract with the defendant union and the defendant union does not represent a majority of the employees of the Robert Richter Hotel, but, notwithstanding that the defendant union does not represent a majority of the employees of the Robert Richter Hotel, the said defendants have attempted to have the said Plaintiffs recognize the defendant union as the bargaining agent of the hotel's employees. That the defendants have set upon an illegal course of action in order to solicit membership in its union among the employees of the Robert Richter Hotel. That the Defendants on many occasions have caused their agents and organizers to come in and upon the premises of the Robert Richter Hotel soliciting the hotel's employees to become members in the union while said employees were at work. That in so doing the defendants, through their agents and organizers, have molested, coerced, intimidated and threatened the employees of the Robert Richter Hotel, and have disrupted the work being done by the employees of the Robert Richter Hotel.

6. That as hereinabove alleged the defendant union does not represent a majority of the employees of the Robert Richter Hotel, but notwithstanding such fact the defendants have attempted to force the Plaintiffs into recognizing the defendant union as a collective bargaining [fol. 6] agent for their employees. That in furtherance of the illegal purposes of the defendant union, its business agent, David Herman, on June 2, 1955, addressed a communication to one of the plaintiffs, Morris Lansburgh,

requesting recognition of the defendant as a collective bargaining agent and professing to represent employees of the Plaintiffs, and threatening, upon the failure of the Plaintiffs to recognize the defendant as a collective bargaining agent, to take action to protect the interests of its professed members, including the threat of publicizing a labor dispute and picketing. That the said communication of the defendant failed to reveal the individual employees whom the defendant professes to represent or the employees whom the defendant claims designated it as their collective bargaining agent. That the defendant carried out the threat of its communication of June 2, 1955, in that the defendant caused pickets to be placed in front of the Robert Richter Hotel at 7:00 o'clock P. M. on June 7, 1955. That said picketing has been carried on continuously in front of the approaches and environs of the Robert Richter Hotel. That four or more pickets are parading in front of the Robert Richter Hotel carrying placards or signs stating: "This hotel refuses to negotiate with Hotel Employees Union, Local #255, American Federation of Labor, 1575 Washington Avenue, Miami Beach". That the aforementioned picketing is illegal and in violation of the laws of the State of Florida in that the defendant union does not represent a majority of the employees of the Plaintiffs, and that a majority of the employees of the Plaintiffs has not designated the defendant as a bargaining agent. That the illegal picketing set in motion by the defendant union is designed to coerce the Plaintiffs into recognizing the defendant union as a collective bargaining agent for the employees of the Robert Richter Hotel, which employees the defendant union does not represent. That the defendants are using the picket line it established to falsely publicize a non-existent labor dispute.

[fol. 7] 7. That the defendant union has set upon a course of action and conduct which it has directed towards the Plaintiffs' hotel and other hotels similarly situated in the City of Miami Beach, Florida, designed and calculated to force the Plaintiffs and operators of other hotels to recognize the defendant union as the collective bargaining agent for employees that the defendant does not represent and

which the defendant seeks to represent, contrary to the will and desire of such employees.

That the defendant union by its actions has imposed economic sanctions upon the Plaintiffs and operators of other hotels in order to illegally achieve their purpose. That the conduct and actions of the defendant are an overall design directed towards all hotels within the City of Miami Beach, Florida, to bring about a recognition of the defendant union by all the hotels as the collective bargaining agent for all hotel employees, nothwithstanding the fact that as hereinabove alleged, the defendant union does not represent such employees or that such employees have not designated the defendant union as a bargaining agent.

That for a period of 60 days, the defendant has caused illegal strikes and walk-outs to be called in violation of the statutes of the State of Florida at numerous hotels in the City of Miami Beach, Florida. That the defendant, in violation of the statutes of the State of Florida, has engaged in picketing for illegal purposes at the Plaintiffs' hotel, the Robert Richter, and at many other hotels in the City of Miami Beach, Florida. That the defendants have widely publicized their activities throughout the United States by newspaper advertisements and otherwise, indicating and directing the public's attention to the hotels where illegal strikes and walkouts have been called and where illegal picketing is being conducted, falsely publicizing a disruption of service at such hotels. That such [fol. 8] publicity is designed and calculated by the defendants to deter guests who have reservations and prospective guests from visiting or coming to hotels in which illegal strikes have been called or where illegal picketing is being conducted. That the defendants, in picketing the Robert Richter Hotel, have subjected it and incorporated it as a part of their overall design to deter guests from coming to the Robert Richter Hotel by falsely publicizing a non-existent labor dispute and directing attention to the presence of pickets which the defendants publicize as an indication of the disruption of service. That in order to maintain and enforce the economic sanctions above referred to, the Defendants have caused additional hotels to be illegally picketed as fast as their illegal picketing

of other hotels has been enjoined, thus constantly maintaining a vehicle to attract the attention to their libelous and false publications.

That the defendants have engaged in vandalism and violence in other hotels which they have picketed. That all of the hotels located in the City of Miami Beach are in close proximity to each other and the pickets used by the defendants have congregated along the entire area where the hotels are situated so as to subject all of the hotels to the effect of the picketing being conducted at individual hotels. That the actions of the defendants, as hereinabove alleged, are designed and calculated to disseminate false information as to the services available in the Plaintiffs' hotel and other hotels, to publicize the presence of a picket line, to indicate illegal or non-existent strikes, and thus to induce both a voluntary and involuntary boycott of the Plaintiffs' hotel and other hotels. That the actions of the defendants are contrary to the expressed desire of the majority of the Plaintiffs' employees and that the actions of the defendants will prevent the operation of the Robert Richter Hotel by the Plaintiffs and thus affect the em-[fol. 9] ployment of employees who are not members of the union and who do not wish to have the union represent them.

8. That the defendants, individually and collectively, are engaged in actions which are in violation of the laws of the State of Florida and the Constitution of the State of Florida in that the said defendants are attempting by their actions hereinabove alleged to

(a) Be designated the collective bargaining agent for employees they do not represent.

(b) To deny the employees of the Robert Richter Hotel the right to work because they are not members of the defendant union.

(c) Establish a picket line for an illegal purpose.

(d) Falsely publicize a non-existent labor dispute.

9. That the defendants have never provided the Plaintiffs with proof that the defendant union represents a

majority of the Plaintiffs' employees, or which employees, if any, the defendants in fact do represent. That on the contrary, the Plaintiffs have been apprised by a majority of their employees that the defendant union does not represent them and that a majority of said employees do not desire to have the defendant union represent them. That the defendant union, through its unlawful conduct, seeks to force the Plaintiffs to execute a contract with it in order that the defendant union might use such contract to coerce and force the plaintiffs' employees to become members of the defendant union.

10. That the actions of the defendant union as hereinabove alleged are instigated by the defendant union and calculated to force the Plaintiffs to recognize the defendant union as a collective bargaining agent for employees of the Robert Richter Hotel notwithstanding the fact that the [fol. 10] said union does not represent a majority of the employees of the Robert Richter Hotel, and in truth and in fact is not the collective bargaining agent of said employees. That the defendant union is well aware of this and notwithstanding such knowledge the defendants, through their actions hereinabove alleged, seek to impose economic sanctions against the Plaintiffs and Plaintiffs' employees by forcing employees of the Robert Richter Hotel, which the union does not represent, to become members of the defendant union; to falsely establish that a strike or labor dispute is in progress at the Robert Richter Hotel and to lead the public to believe that the usual service available at the Robert Richter Hotel is no longer available in view of the picketing. That by reason of all this the Plaintiffs are suffering irreparable damage and harm. That if the illegal actions of the defendant union are allowed to continue, Plaintiffs will be unable to continue the operation of the hotel, to meet their commitments to guests for which they have received advance reservations, and that the Plaintiffs will be unable to meet their rental obligations and will thus place in jeopardy their valuable assets, their leasehold interest in the Robert Richter Hotel, and in addition thereto will be forced to forfeit their security deposit of $200,000.00, which guarantees their performance of the lease indenture. That if

the actions of the Defendant union, as hereinabove alleged, are allowed to continue a majority of the employees of the Robert Richter Hotel will be denied the right to work, a right guaranteed to them by the Constitution of the State of Florida. That unless the Defendant union, its agents, officers, members and organizers are enjoined from picketing or engaging in any illegal activities against the Plaintiffs and the Plaintiffs' employees, the Plaintiffs and their employees will suffer irreparable harm, damage and in-
[fol. 11] jury. That unless such injunction is given without notice, for the reason that to require such notice would defeat the purpose for which the injunction is sought, the Plaintiffs and the Plaintiffs' employees will suffer irreparable damage, injury and harm.

Forasmuch, therefore, as the Plaintiffs are without remedy save in a court of equity, Plaintiffs pray that this Court will take jurisdiction of the parties and the subject matter hereof, and that the Defendants may be required to make answer, but not under oath, answer under oath being waived.

Plaintiffs further pray that this Court will, pending final hearing of this cause, grant a preliminary and temporary injunction restraining the defendants, their officers, agents, organizers or anyone in conspiracy with them, from picketing in and about the premises of the Plaintiffs, to wit, the Robert Richter Hotel or in the vicinity or environs of the hotel. Plaintiffs further pray for the entry of such preliminary and temporary injunction as hereinabove requested without notice to the defendants for the reason that to require such notice would defeat the purpose for which the injunction is sought. That unless such temporary restraining order is entered forthwith the property of the Plaintiffs, as well as its employees, will be subjected to further irreparable injury and damage which will be brought about by the defendants. That this Court will in said order grant such other and further relief as to the Court may be deemed necessary and proper in the premises, and that this Court will, upon final hearing, cause said restraining order or injunction to be made permanent. The Plaintiffs further pray that the Court will upon final

hearing grant to the Plaintiffs such other and further relief as to the Court may seem meet and proper.

/s/ Morris Lansburgh, /s/ Daniel Lifter, Plaintiffs.

Sibley & Davis, Patton & Kanner, Attorneys for Plaintiffs, By /s/ Samuel G. Kanner, Of Counsel, 213 Shoreland Building, Miami 32, Florida.

[fol. 12] *Duly sworn to by Morris Lansburgh and Daniel Lifter, jurats omitted in printing.*

[fol. 13]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-C

[Title omitted]

INDEX TO AFFIDAVITS—Filed June 14, 1955

(1) Threats that employees would lose jobs if they refused to join union.

Affidavits of employees:

Star Smith, P. 1-2;
Michael Petito, P. 3;
Paul Barrero, P. 5-6;
John W. Busch, P. 7-8;
Fred Rivkowich, P. 9-10
Margaret Biddle, P. 11-12;
Victor Torres, P. 13;
Helen Luksa, P. 16;
Frances Wills, P. 18;
Bernard Walters, P. 20.

(2) Threats of physical violence to employees:

Affidavits of employees:

Fred Rivkowich, P. 9;
Margaret Biddle, P. 11-12.

(3) Statements that union does not represent employees:

Affidavits of employees:

Star Smith, P. 2;
Michael Petito, P. 4;
Paul Barrero, P. 6;
John W. Busch, P. 8;
Fred Rivkowich, P. 10;
Margaret Biddle, P. 12;
Victor Torres, P. 14;
Helen Luksa, P. 16-17;
Frances Wills, P. 19;
Bernard Walters, P. 21.

(4) Entry upon hotel property without permission to solicit union membership:

[fol. 14] Affidavits:

Star Smith, P. 2;
Michael Petito, P. 3;
Paul Barrero, P. 6;
John W. Busch, P. 8;
Fred Rivkowich, P. 10;
Margaret Biddle, P. 11;
Victor Torres, P. 13;
Helen Luksa, P. 17;
Frances Wills, P. 18;
Bernard Walters, P. 20-21;

(5) Failure of union to affirmatively establish its designation as collective bargaining agent:

Affidavits:

Marion E. Sibley, P. 22-23;
Morris Lansburgh, P. 24;

(6) Dissemination of false Publicity of labor dispute and strike:

Affidavits:

Daniel Lifter, P. 27;
Herbert Nadeau, P. 29-30.

[fol. 15]

180412-D

AFFIDAVIT OF STAR SMITH

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Star Smith, who being first duly sworn, deposes and says:

I reside at 629 Lenox Avenue, Miami Beach, Florida, and I have been a resident of Dade County, Florida, for 17 years. I am now employed as a maid at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida, and I have been working here for about 4½ years.

I am completely satisfied with the wages that I am receiving, the hours which I work and the other conditions of employment. I have no dispute with Management concerning any of the conditions of my employment.

I believe that a majority of the employees have no dispute with Management and are satisfied with the conditions of their employment.

About five weeks ago one of the employees of the Hotel, whose name I did not know, approached me and told me that he was a member of the Hotel Employees Union, Local 255, [fol. 16] American Federation of Labor, and he asked me to join this union. I told him that I had no desire to join the union because I was completely satisfied with the conditions of my employment. This union member then attempted to make me join the union by threatening me. He stated that if I did not join the union that the members of the union would not work with me when the union took over and that I would lose my job.

There have been several attempts by people who are not guests, and who are not employees of the Hotel, to come into the Hotel and talk to the employees in an attempt to force them to join the union.

I am not a member of this union, I have not authorized this union to negotiate with the Management for me, and I do not desire to become a member nor do I desire to have this union negotiate for me.

On Wednesday, June 8th, when I came to work I saw a picket line in front of the Hotel. The individuals were carrying signs which read "This hotel refuses to negotiate with Hotel Employees Union, Local 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach." This picket line has been present at all times since this date.

I believe that a majority of the hotel employees with whom I work and come in contact are not members of the union, and have not authorized the union to negotiate with Management, and I believe that they do not desire to join, nor do they desire to have this union negotiate for them. It is not my desire that this hotel negotiate a contract with this union because if a contract were made with this union I have no desire to join the union, and I might be forced to leave my job.

Further affiant sayeth not.

/s/ Star Smith

Subscribed and sworn to before me this 13th day of June, 1955.

/s/ B. A. Rolland, Notary Public, State of Florida At Large. My Commission Expires: Nov. 15, 1958.

(Seal)

[fol. 17]

180412-D

AFFIDAVIT OF MICHAEL PETITO

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Michael Petito, who being first duly sworn, deposes and says:

I reside at 9500 Northwest 31st Court, Miami, and I have been a resident of Dade County for approximately two years. I work at the Robert Richter Hotel, 3301 Collins

Avenue, Miami Beach, Florida, as a bellhop. I have been working at this hotel for approximately two years.

Around a month ago a man came into the hotel, who was not a guest at the hotel, and was not an employee of the hotel. He stated that he was a member of a labor union known as Hotel Employees Union, Local No. 255, of the American Federation of Labor, and he tried to persuade me to join this union. I have had no dispute with the hotel management about any of the conditions of my employment. I am satisfied with my wages, my hours, and all other conditions of my work at the hotel. I therefore told this union member that I did not desire to join his union as I saw no necessity for joining. This man insisted that I join, however, and stated to me that the union was going to come in and that those who didn't belong to it would probably lose their jobs.

[fol. 18] At other times, other outsiders came on to the hotel premises distributing pamphlets to the employees, and tried to persuade the employees to join this union.

On Monday, June 7th, individuals carrying picket signs appeared in front of the hotel. These signs stated, "This hotel refuses to negotiate with Hotel Employees Union, Local No. 255, American Federation of Labor". Since June 7th these pickets have always been present.

I am not a member of this union, and I know that a majority of the employees with whom I work are not members. I have not authorized this union to negotiate with management for me, and I know that a majority of the employees with whom I work have not authorized the union to negotiate for them.

I do not desire to join the union, and I do not desire to have them negotiate for me, and I know that the majority of the employees with whom I work do not desire to join this union, and do not desire to have it negotiate with management for them. I know that a majority of the employees, like myself, have no labor dispute with the management, and I do not want management to make a contract with this union, because I am afraid that the union would then carry out the threats which have been made, and would cause me to lose my job, if I refused to join.

Further affiant sayeth not.

/s/ Michael Petito

Subscribed and sworn to before me this 13th day of June, 1955.

/s/ B. A. Rolland, Notary Public, State of Florida at Large. My Commission Expires: Nov. 15, 1958.

(Seal)

[fol. 19]

180412-D

AFFIDAVIT OF PAUL BARRERO

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Paul Barrero, who being first duly sworn, deposes and says:

I am employed at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida, where I work as a short-order cook and pantry man. I have been employed by the Robert Richter Hotel for approximately 5 years. My home is at 256 N. E. 17th Terrace, Miami, Florida, and I have been a resident of Dade County, Florida, for approximately 10 years.

Since I have been employed by the Robert Richter Hotel, I have had no disputes with the management about any of the conditions of my employment. I am satisfied with my wages, hours, and other working conditions. I know that a majority of the employees with whom I work, are also satisfied with conditions of their employment.

For the past several weeks, attempts have been made by certain individuals to persuade the employees of the hotel to join the Hotel Employees Union, Local #255, American [fol. 20] Federation of Labor. On one occasion, one of the employees of the hotel, who had joined the union, tried to persuade me to join and threatened that if you did not join, the members of the union would refuse to work with you when the union organized the hotel. This caused me

concern, since It (sic) could only mean then I would be forced to lose my job.

On other occasions, I have observed a hotel employee, whom I knew as "Manuel", and who worked as a cook, attempt to persuade the employees to join the Union, and I have heard him state upon the employees' refusement to join, that he would "blackball" them; that they had been given their chance and would be unable to join the union or obtain work anywhere.

Certain individuals, who were not guests, and who were not employed at the hotel, have come to the hotel premises and have made attempts to persuade the employees to join this union. These outsiders have also threatened that the union members would not work with those of us who refused to join, and thus, force us to lose our jobs.

On Monday night, between 6 and 7 p.m., a picket line appeared in front of the hotel. The people carried signs, reading: "This Hotel Refuses to Nogotiate (sic) With Hotel Employees Union, Local #255, American Federation of Labor." This picket line has always been present since this day when I arrived at work, and when I leave.

I am not a member of this union. I have not authorized this union to negotiate with the management for me, I do not desire to join this union, and I do not desire for this union to negotiate with the management for me. I know that a majority of the employees with whom I work, are not members of the union, and have not designated the union to negotiate for them and do not desire to join the union or to have the union represent them.

[fol. 21] If the hotel engages with this union, and enters into a contract with the union, I am afraid that the union members will refuse to work with me because I have not joined the union, and will carry out their threats to have me lose my job.

Further affiant sayeth not.

s/ Paul Barrero

Subscribed and sworn to before me this 13th day of June, 1955.

s/ B. A. Rolland, Notary Public, State of Florida at large, My Commission Expires Nov. 15, 1958.

(Seal)

[fol. 22]

IN CHANCERY No. 180412-D

AFFIDAVIT OF JOHN W. BUSCH

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, John W. Busch, who being first duly sworn, deposes and says:

I reside at 213 Southwest 2nd Avenue, Dania, Florida, where I have been living for about a year and a half. Prior to this I lived in Dade County, Florida, and I have been a resident of Dade County and Broward County for over three years.

I am now employed at the Robert Richter Hotel at 3301 Collins Avenue, Miami Beach, as a waiter. I have worked for the Robert Richter Hotel for over two years, however I have not been employed by the Robert Richter Hotel for a period of over a year. About two weeks ago I again sought employment at the Robert Richter, and was hired in my present job.

On reporting to work I was asked by one of the hotel employees, a cook known to me as "Manuel", if I was a member of the labor union. He told me that he was a member of Hotel Employees Union, Local no. 255, American Federation of Labor, and told me I could not work [fol. 23] here unless I joined this union. I told him that I had no desire to join his union; that I was an American citizen, and that I could work anywhere I desired, without joining this or any other labor union. He then attempted to force me to join, by threatening me, stating that the union would take over and that if I did not join I would be out of a job.

Since I have been at the Robert Richter certain people who were neither guests nor employees have come upon the hotel premises without permission and have distributed pamphlets urging the employees to join the union, and have otherwise made attempts to cause the employees to become union members.

On June 9, 1955, men carrying picket signs appeared in front of the hotel. The signs stated that this hotel refused

to negotiate with Hotel Employees Union, Local No. 255, A. F. of L. These pickets have always been present since this date.

I have no dispute with the management of this hotel about the conditions of my employment, and I had no disputes with the management about the conditions of my employment when I was previously employed by this hotel. I am satisfied with my wages, hours, of my work, and all of the other conditions of my employment.

I am not a member of this union, Local No. 255, and I have not authorized this union to negotiate with management for me. I do not desire to become a member of the union, and I do not desire to have this union negotiate for me. I know that a majority of the employees with whom I work are not members of the union, and have not named the union as their agent to negotiate for them; do not desire to become members and do not desire to name this union as their agent to negotiate for them.

I do not want management to negotiate a contract with this union, because I am afraid that the union would then carry out the threats which have been made, and I would be forced to lose my job unless I joined the union.

Further affiant sayeth not.

/s/ John W. Busch

Subscribed to and sworn to this 13th day of June, 1955 before me.

/s/ B. A. Rolland, Notary Public, State of Florida at large. My Commission Expires Nov. 15, 1958.

(SEAL)

[fol. 24]

No. 180412-D

AFFIDAVIT OF FRED RIVKOWICH

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Fred Rivkowich, who being first duly sworn, deposes and says:

I work at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida. I am Assistant Engineer, and I have been employeed (sic) at this job for approximately a year and 9 months. I reside at 452 S. W. 2nd Street, Miami, Florida, and I have been a resident of Dade County for over 5 years.

Since I have been employed at the Robert Richter Hotel, I have had no disputes with the management about any of the conditions of my employment. I am satisfied with my wages, hours, vacation time, and other conditions of employment, and my employers have always been considerate of me in every respect.

Several weeks ago, a member of a labor union, the Hotel Employees Union, Local #255, American Federation of Labor, who was also employed at the Robert Richter, tried by threats, to make me join this labor union. When I refused to join, and told him I had no interest in his union, he actually threatened me and stated "You're not too big [fol. 25] to get kicked in the ————!" This type of threat in coercion continued for a week to 10 days.

About a week ago, another member of this union tried to persuade me to join this union, and when I refused, he threatened me by stating that the union was going to "take over" and when it did, those of us that refused to join, "would be out."

For several weeks, on occasions, individuals who were not hotel guests, and who were not employed in the hotel, had, without permission, entered the hotel premises and had distributed pamphlets urging the employees to join the union, and had made threats similar to those described above, and had tried to persuade employees to join this union.

On Monday, June 7th, individuals appeared in front of the hotel carrying signs which read: "This hotel refuses to negotiate with Hotel Employees Union, Local #255, American Federation of Labor". These pickets have always been present since June 7th.

I am not a member of this union, I have not named this union to negotiate for me, and don't desire to become a member. Nor do I desire to have them negotiate with the management for me. I know that the majority of the

employees with whom I work, are not members of this union, and have not named this union to negotiate for them, and do not desire to become members or to have this union negotiate for them.

Further affiant sayeth not.

/s/ Fred Rivkowich

Subscribed and sworn to before me this 13th day of June, 1955.

/s/ B. A. Rolland, Notary Public, State of Florida at Large, My Commission expires: Nov. 15, 1958.

(SEAL)

[fol. 26]

No. 180412-D

AFFIDAVIT OF MARGARET BIDDLE

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Margaret Biddle, who being first duly sworn, deposes and says:

I work as a maid at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida. I have had this job for over three years. My address is 1756 Madison Street, Hollywood, Florida, and I have lived there for approximately five years.

Since I have been employed at the Robert Richter Hotel, I have had no disputes with the management about any of the conditions of my employment. I am satisfied with my wages, with the hours of work and with all the conditions there.

Several weeks ago certain individuals entered the hotel premises and attempted to persuade the employees to join Hotel Employees Union, Local No. 255, American Federation of Labor. On one occasion as I was attending to my duties in cleaning a room on the eighth floor, a man entered the room and told me he represented this union. He asked

me to join the union, and I told him that I was not inter-
[fol. 27] ested. We talked for a long time and his manner became rude and threatening. When I continued to state that I did not want to join the union he asked me in a threatening manner, "What time do you leave work?" I told him that this was none of his business, and as he left me he pointed his finger at me, shook his hand in a threatening manner and said, "I will see you." This type of threat has caused me to fear that if the management should negotiate and make a contract with this union, the union will cause trouble for those of us who have joined, and may cause us to lose our jobs.

I am not a member of this union: I have not authorized this union to negotiate for me; and I do not desire to become a member, or to have this union negotiate with management for me.

I know that a majority of the hotel workers with whom I work are not members of this union, and have not authorized this union to negotiate with management for them, and I also know that a majority of the employees with whom I work do not desire to join the union and do not desire to have this union negotiate for them.

Further affiant sayeth not.

/s/ Margaret Biddle

Subscribed and sworn to before me this 13th day of June, 1955.

/s/ B. A. Rolland, Notary Public, State of Florida at Large. My Commission Expires Nov. 15, 1958.

(Seal)

[fol. 28]

No. 180412-D

Affidavit of Victor Torres

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Victor Torres, who being first duly sworn, deposes and says:

I live at 1462 N. E. 118th Street, Miami, Florida, and I have been a resident of Dade county, Florida for 5 years. I am employed at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida, and I have been working there for over 4 years. My duties are that of a cook and general supervisor of the kitchen.

Several weeks ago, there were attempts made by certain individuals, whose names I do not know, to enter the hotel premises and persuade the employees of the hotel to join a certain labor union, Hotel Employees Union, Local #255, American Federation of Labor. On one occasion, 2 organizers entered the kitchen and distributed pamphlets telling about a meeting of the union. On another occasion, these organizers entered the kitchen of the hotel and gave cards to the hotel employees, requesting the employees to join their union. These organizers attempted to force the hotel workers to join their union by threatening that if they did not join the union, they would lose their jobs when the union "took over."

[fol. 29] I am not a member of this union, and I know that a majority of the hotel employees with whom I work, are not members of this union. I also know that a few of the employees with whom I work have joined the union because they have been threatened with violence, and have joined the union because they are afraid, and not because they desire the union to represent them.

Since I have been working at the Robert Richter Hotel, I have had no disputes with the management about wages, hours, or other conditions of employment, and I know that a majority of the hotel employees with whom I work, have had no disputes with the management.

I have refused to join the union because I am satisfied with the conditions of my employment, and I see no necessary reason for joining this union, and I know a majority of employees with whom I work, have refused to join for the same reason.

I do not want this union to act as my agent with negotiations with the management, and I know that the majority of the employees do not want this union to negotiate with the management as their agent.

If the hotel should enter into a contract with this union, I am afraid that the union would carry out the threats made by its organizers, to cause those who have not joined, to lose their jobs.

Further affiant sayeth not.

/s/ Victor Torres

Subscribed and sworn to before me this 13th day of June, 1955.

/s/ B. A. Rolland, Notary Public, State of Florida at large—My Commission Expires Nov. 15, 1958.

(SEAL)

[fol. 30]

No. 180412-D

AFFIDAVIT OF HELEN LUKSA

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Helen Luksa, who being first duly sworn, deposes and says:

I reside at 806 N. W. 22nd Place, Miami, Florida, and I have been a resident of Dade County, Florida, for over 17 years. I am employed as a waitress at the Robert Richter Hotel, 3301 Collins Ave., Miami Beach, Florida, and I have been working here for over 5 years.

Since I have been working at the Robert Richter Hotel there have been no disputes between myself and the hotel management concerning wages or hours or working conditions. I am completely satisfied with the terms of my employment. I am well paid; I receive vacation time with pay; I have annually received a Christmas bonus; I am covered by hospitalization insurance, at the experse of the hotel, and my employers have always been considerate of me in every respect.

I know of my own knowledge that a majority of the employees with whom I work feel the same way I do about

our wages, hours and working conditions, and are satisfied with the terms of our employment.

On Monday, June 7th, certain people appeared in front of the hotel carrying picket signs which read, "This hotel [fol. 31] refuses to negotiate with Hotel Employees Union Local #255, American Federation of Labor." Since that date these pickets have always been present when I arrive to work and when I have left work.

Starting about the middle of May a certain few of the employees with whom I worked informed the other employees that they were members of Hotel Employees Local Union 255, American Federation of Labor, and told us that there was going to be a strike, that we had better join the union. Since that time there has been constant pressure by a few union members, in an attempt to coerce the other employees to become union members. This pressure has consisted of statements threatening us that when the union "got in" that those of us that did not join, that they would refuse to work with those of us that did not join, and would thus cause us to lose our jobs. This type of threat was constant, and every day we were subjected to this pressure. I dreaded to come to work, because of this type of activity. One of the cooks with whom we worked, whom I knew as "Manual", threatened to cause me to lose my employment when the union "got in", if I would not join. One of the waiters with whom I worked and knew as "Harry", also made the same threat. I and the other employees who were not interested in the union, informed these union members that we were satisfied with our wages, hours, and our working conditions, and that we had no dispute with the management and we saw no necessity nor did we have any desire to join the union.

I am not a member of the union, nor do I desire to have this union act as my agent in negotiating with management, and I know for a fact that the majority of the employees with whom I work do not desire to have this union act as their agent, nor have we designated this union as our agent for negotiations.

Not only have members of the union, who are employees here, made attempts to threaten and coerce the non-union employees, to join the union, but certain union organizers

who, to my knowledge, have never been employed here, have entered the hotel premises and and (sic) have talked [fol. 32] to employees and distributed pamphlets, attempting to solicit on the hotel premises membership for the union.

I especially recall one individual, whose name I do not know, who would come into the outside patio where we served meals, would sit at one of the tables and would talk to all the waiters as they attempted to go about their duties. This practice actually interfered with the waiters attending to their duties. I have also seen this same individual distributing pamphlets throughout other parts of the hotel, such as the locker rooms and other hotel spaces.

Since I am not a member of the union, I know of my own knowledge that a majority of the employees with whom I work are not members. I have not designated this union to negotiate for me, and I know of my own knowledge that a majority of the employees with whom I work have not so designated this union.

Since I do not desire to join the union, or to have them negotiate for me, and I know of my own knowledge that the majority of the employees with whom I work do not desire to join or to designate this union as their agent, I believe that the only purpose for the picket line which has been thrown up in front of the hotel is in order to force the employees such as myself to become members of this union. I say this because of the threats and intimidation which we have undergone during the period prior to setting up of the picket line.

Further affiant sayeth not.

/s/ Helen Luska

Subscribed and sworn to before me this 13th day of June, 1955.

/s/ B. A. Rolland, Notary Public, State of Florida at Large—My Commission expires Nov. 15, 1958.

(N P Seal)

[fol. 33]

IN CHANCERY NO. 180412-D

AFFIDAVIT OF FRANCES WILLS

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Frances Wills, who being first duly sworn, deposes and says:

I am employed as an elevator operator at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida, and I have been employed there for over two years. I live at the Capri Hotel, 3010 Collins Avenue, Miami Beach, Florida, and I have been a resident of Dade County, Florida, for over 6 years.

Approximately 3 weeks ago, certain individuals, whose names I do not know, entered the premises of the Robert Richter Hotel, and on the various floors of the hotel began to ask the hotel employees to join a certain labor union, the Hotel Employees Union, Local 255 of the American Federation of Labor, I know that these individuals did not come to the hotel premises with the permission of the management. This type of activity continued by groups of union organizers on a number of different occasions. These organizers attempted to force the employees to join their union by threatening us that when the union took over we would lose our jobs unless we joined.

[fol. 34] I have had no dispute with the management of this hotel with regard to my wages or hours of working. In fact, I am completely satisfied with my hours of work and the conditions of my employment. I receive adequate wages and I am satisfied with my hours of work. I receive vacation time with pay. I have received Christmas bonuses and I receive hospitalization insurance at the expense of the management. I also know, for a fact, that the majority of the employees with whom I work are satisfied with the terms of their employment and have had no dispute with the management.

When I came to work on Wednesday, June 8th, I noticed a picket line in front of the hotel. The pickets carried

signs which read "This hotel refuses to negotiate with Hotel Employees Union Local #255, American Federation of Labor, 1575 Washington Avenue, Miami Beach". Since that date these pickets have always been present when I come to work and when I leave my job.

I am not a member of this union. I do not want this union to represent me in any negotiation with management and I know for a fact that a majority of the workers with whom I work are not members of the union, have not designated the union as their agent to negotiate with management and have no desire to negotiate with the union or have the union negotiate for me.

I do not want the hotel to negotiate a contract with this union because the organizers of this union have attempted to coerce me to join their union. I am afraid that if the management made a contract with this union the union members would carry out their threat to cause me to lose my job since I have refused to join with them.

Further affiant sayeth not.

/s/ Frances Wills

Subscribed and sworn to before me this 13th day of June, 1955.

/s/ B. A. Rolland, Notary Public, State of Florida at Large. My Commission expires Nov. 15, 1958.

(N P Seal)

[fol. 35]

No. 180412-D

Affidavit of Bernard Walters

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Bernard Walters, who being first duly sworn, deposes and says:

I live at 550 N. W. 152nd Street, Miami, Florida, and I have been a resident of Dade County, Florida, for over 10 years. I am employed as Head Bell Captain at the

Robert Richter Hotel, 3301 Collins Avenuem (sic) Miami Beach, Florida, and I have been employed here for 4 and one-half years.

Since I have been working at the Robert Richter Hotel, I have had no disputes with the management about any of the conditions of employment. I am satisfied with the wages, hours, and other conditions of employment. I also know that a majority of the employees with whom I work, have had no disputes with the management, and are satisfied with the conditions of their employment. For several weeks, there have been attempts made by various individuals, who have stated that they are members of the Hotel Employees Union, Local #255, American Federation of Labor, to persuade the employees of the Robert Richter Hotel to join this union. This attempt to persuade the [fol. 36] employees to join this union has taken the form of threats and coercion. Several weeks ago, while attending to my duties, I was approached by a man who was neither a hotel guest not employee. He had certain union membership cards and he tried to persuade me to join this union. I refused to join the union, saying that I was satisfied with the conditions of my employment and there was no necessity for joining his union. He then threatened me by saying that "this union was going to take over, and when they did take over, those of us who had refused to join, would be out.

The other employees with whom I work, have reported similar instances with threats and coercion.

On Monday, June 7th, a picket line appeared in front of this hotel. The signs carried by the people read; "This hotel refuses to negotiate with Hotel Employees Union, Local #255, American Federation of Labor." These pickets have been present every day since June 7th.

I am not a member of this union, I have not designated this union to negotiate with the management for me, I do not desire to join this union, and nor do I desire this union to represent me. I also know that the majority of the employees whom I work with are not members of this union, have not designated this union to negotiate for them, and do not desire to join or designate this union as their agent.

If the hotel should negotiate a contract with this union, I am afraid that those of us who have refused to join, would be forced out of employment. As the union has said, that when they take over, we will be out of luck.

Further affiant sayeth not.

/s/ Bernard Walters

Subscribed and sworn to before me this 13th day of June, 1955.

/s/ B. A. Rolland, Notary Public, State of Florida at Large—My Commission expires Nov. 15, 1958.

(N P Seal)

[fol. 37]

No. 180412-D

Affidavit of Marion E. Sibley

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Marion E. Sibley, who, being by me first duly sworn, deposes and says:

That he was, prior to May 20, 1955, designated as the bargaining agent for and on behalf of the Robert Richter Hotel and the Versailles Hotel. His appointment was communicated to David Herman, who had requested a conference, and such conference was held on May 20, 1955.

The deponent never refused to negotiate with the said David Herman. Deponent required proof from the said Herman that Local Union No. 255 represented the employees of the two hotels. A formula was submitted by the deponent to the said Herman for ascertaining whether or not the said Local #255 represented the employees of the said two hotels, and said conference was adjourned until Monday, May 23, 1955, for the purpose of receiving from the said Herman his response to the procedure suggested by the deponent. Deponent held himself available at his office throughout May 23, 1955 for the purpose of continuing the conference with the said Herman and his attorney, J. W. [fol. 38] Brown. Neither of the said parties communicated

with the deponent or sought to continue said conference as agreed, and the deponent has heard from neither of said parties since that time, although he has been ready, able and willing to continue said conference up until the picket lines were set around said hotels.

/s/ Marion E. Sibley

Subscribed and sworn to before me, this 14th day of June, A. D. 1955.

Alise Broun, Notary Public, State of Florida at large. My Commission expires: Sept. 10, 1955.

(N P Seal)

[fol. 39]

No. 180402-C

AFFIDAVIT OF MORRIS LANSBURGH

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Morris Lansburgh, who, being by me first duly sworn, deposes and says:

That Affiant, together with Daniel Lifter, are the owners of a leasehold interest in and to the Robert Richter Hotel, and that Affiant and Daniel Lifter are the operators of the said Robert Richter Hotel. That Affiant, together with Daniel Lifter, designated Marion E. Sibley as their bargaining agent for and on behalf of the Robert Richter Hotel, and authorized him to meet with David Herman, the representative of Local #255, of the American Federation of Labor. That a conference was held in the office of Marion E. Sibley on May 20, 1955, at which there was present Marion E. Sibley, Affiant, Daniel Lifter, David Herman and one Brown, attorney for the union. That at said meeting the union was requested to show and affirmatively establish that they represented a majority of the employees of the Robert Richter Hotel, and upon the union failing to do so a plan was suggested to determine whether or not the union in truth and in fact was the collective bargaining agent for [fol. 40] a majority of the Robert Richter Hotel's employees. The defendant, David Herman, requested that he

be permitted to take the matter under advisement, and a meeting was again scheduled for Monday, May 23, 1955 to receive the response from David Herman as to the procedure suggested. That no further word was received from the defendant David Herman, the union or the union's attorneys, and that said defendants failed to keep the appointment set for May 23, 1955. That notwithstanding the offer to recognize the defendant union as the collective bargaining agent, if the defendant union affirmatively and authoritatively established that it had been designated as the collective bargaining agent for a majority of the employees of the Robert Richter Hotel, the defendant union failed to keep the appointment as aforesaid, and on June 2, 1955, addressed to the affiant a communication, a copy of which is attached hereto and made a part hereof as if fully set out herein, styled Exhibit "A". That accompanying said letter was a request for settlement of grievances and complaints, a copy of which is attached hereto as Exhibit "B" and made a part hereof as if fully set out herein, and also accompanying said communication was a certification of one Paul J. Weiss, a copy of which is attached hereto as Exhibit "C" and made a part hereof as if fully set out herein. That Affiant avers that the request to settle the grievances and complaints manifested by Exhibit "B" is erroneous and false in that it is not the grievances and complaints of a majority of the employees of the Robert Richter Hotel. Affiant further avers that the certification attached hereto as Exhibit "C" is erroneous (sic) and false in that Affiant knows of his own knowledge that a majority of the employees of the Robert Richter Hotel are not members of the defendant union, have not designated the defendant union as a collective bargaining agent and are not desirous of becoming affiliated with the defendant union. That affiant replied to the communication of the Defendant, David Herman, attached hereto as Exhibit "A", by letter dated [fol. 41] June 7, 1955, a copy of which is attached hereto as Exhibit "D" and made a part hereof as if fully set out herein. That the defendants in the above styled cause have never at any time furnished affiant or Marion E. Sibley or Daniel Lifter with the names of the employees they profess to represent or furnished affiant, Marion E. Sibley or Daniel Lifter with any proof whatsoever of the designation

of the defendants as bargaining agents for any employees of the Robert Richter Hotel. That on the contrary, the defendants, completely ignoring the request of affiant, established a picket line at the Robert Richter Hotel.

Further Affiant Sayeth not.

/s/ Morris Lansburgh

Subscribed and sworn to before me, this 14th day of June, A. D. 1955.

/s/ Alise Broun, Notary Public, State of Florida at Large. My commission expires: Sept. 10, 1955.

(Seal)

[fol. 42]

EXHIBIT "A" TO AFFIDAVIT OF MORRIS LANSBURGH

HOTEL EMPLOYEES UNION
Local 255
Miami — Miami Beach
1575 Washington Avenue
Miami Beach, Florida

A. F. of L.

Embracing all
Classifications of
Hotel Workers
in the Miami -
Miami Beach Area

Phone 58-0539

Affiliated with:
Hotel and Restaurant Employees and Bartenders International Union
Florida Fed. of Labor Fiorida Culinary Alliance
Dade County Central Labor Union

June 2, 1955

Mr. Morris Lansburgh
Hotel Robert Richter
Miami Beach, Florida

This is to advise you that the Hotel Employees Union, Local #255, represents a substantial number of your em-

ployees. A certification by a Certified Public Accountant, duly licensed by the State of Florida, certifying to that fact is enclosed herewith.

Those employees of yours who are represented by this local Union, have certain grievances and complaints. In order to settle those grievances and complaints, we are making certain requests of you, on their behalf. Those requests are contained in the document enclosed herewith, entitled "Requests to settle grievances and complaints."

Will you please meet with the undersigned representative to settle these grievances and complaints through negotiation and upon such settlement, to reduce such settlement to writing and duly execute the same.

In the event you desire, we will be willing to submit any or all of these complaints, grievances and requests to a mutually satisfactory arbitrator or if we are unable to agree to a mutually satisfactory arbitrator, to an arbitrator designated and selected by the American Arbitration Association, with both parties abiding by the rulings of such arbitrator.

Under no circumstances, do we desire or would we accept any type of contract or agreement which would either expressly or by implication force your employees to designate this Union or any organization or individual, as their bargaining agent, or which would in any way compel your employees to become members of this Union or any other organization.

Unless we hear from you in the affirmative by June 7, 1955, we shall understand that you do not wish to meet with us or to adjust these differences. We shall then feel free to take whatever action will protect the interest of our members, including publicizing the facts and picketing.

Very truly yours,

(signed) David Herman
David Herman
Director of Organization
Hotel Employees Union Local #255

[fol. 43]

EXHIBIT "B" TO AFFIDAVIT OF MORRIS LANSBURGH

HOTEL EMPLOYEES UNION
Local 255
Miami - Miami Beach
1575 Washington Avenue
Miami Beach, Florida

A. F. of L.

Embracing all Classifications of Hotel Workers in the Miami - Miami Beach Area

Phone 58-0539

Affiliated with: Hotel and Restaurant Employees and Bartenders International Union Florida Fed. of Labor Florida Culinary Alliance Dade County Central Labor Union

Requests to Settle Grievances and Complaints

1. Increase minimum wage to the legal Federal minimum of 75¢ per hour with a proportionate increase for all those receiving more than 75¢ per hour.
2. Reduce the work week to the legal federal maximum of 5 days, 40 hours per week, with time and one half for all hours in excess of the Federal Maximum.
3. Provide for weekly payment of wages instead of the present semi-monthly payment.
4. Establish a welfare program that will provide for hospitalization, Medical and Surgical care.
5. Eliminate the practice of kick-back between and among employees such as bellman, waiters, waitresses and bell Captains, superintendents of service and head waiters wherever such practice exists.
6. Establish a procedure for the adjustment of grievances that may develop in the future as a part of employer-employee relationship.

7. Establish seniority rules.
8. Provide annual vacations with pay based upon a schedule of one week vacation for each year of employment with a maximum of three weeks.
9. Provide for time off on those Holidays that are legally recognized in the State of Florida.

[fol. 44]

EXHIBIT "C" TO AFFIDAVIT OF MORRIS LANSBURGH

CERTIFICATION

PAUL J. WEISS, being first duly sworn, deposes and states as follows:

The undersigned Paul J. Weiss residing at 3720 Poinciana Avenue, Miami, Florida is a duly registered voter in Dade County, Florida and has resided in Dade County, Florida since 1923, PAUL J. WEISS is a certified public accountant, duly licensed by the State of Florida and has practiced the profession of accounting for more than 30 years.

The undersigned has at the request of Miami Hotel Employees Union, Local #255, examined the records of Local #255, to determine its claim that certain employees of your hotel, are members of Local #255 and have designated Local #255, as their collective bargaining agent. The examination of those records reveals that 40 of your employees are members of Local #255 and have duly designated Local #255 as their collective bargaining agent.

(signed) PAUL J. WEISS

Sworn to and subscribed before me this 2nd day of June, 1955.

(signed) J. M. SCHUTTER
Notary Public
My Commission expires:

(Notary Seal)

Notary Public State of Florida
at Large
My commission expires: Oct. 9, 1957
Bonded by American Surety Co.
of N. Y.

[fol. 45]

EXHIBIT "D" TO AFFIDAVIT OF MORRIS LANSBURGH

June 7, 1955

Mr. David Herman
Director of Organization
Hotel Employees Union Local #255
1575 Washington Avenue
Miami Beach, Florida

Dear Mr. Herman:

Upon receipt of the names of the employees you claim to represent, together with trustworthy proof that such employees have designated your Union to represent them, we shall communicate with you regarding this matter.

Very truly yours,

ROBERT RICHTER HOTEL

By
Morris Lansburgh

ML:hr

[fol. 46]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-C

[Title omitted]

AFFIDAVIT OF DANIEL LIFTER

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Daniel Lifter, who, being by me first duly sworn, deposes and says:

That he, together with Morris Lansburgh, are the owners of a leasehold interest in the Robert Richter Hotel, and are the operators of the Robert Richter Hotel. That there

has been published throughout the United States libelous and false advertisements stating that there is in existence at various hotels located in the City of Miami Beach, Florida, strikes, walkouts, and labor disputes. That said advertisements have been calculated and directed to cause the general public to desist from visiting said hotels and to create in the minds of prospective guests of such hotels that a labor dispute exists, that employees are an (sic) strike, and that, therefore, the services usually available at such hotels would be substandard. That as late as June 5, 1955, there appeared in the Boston Sunday Herald of Boston, Massachusetts, an advertisement, a photostatic copy of which is attached hereto as Exhibit "A" and made a part [fol. 47] hereof as if fully set out herein. That said advertisement is false and libelous. That injunctive orders were entered in each of the hotels designated in said advertisement enjoining any strike. That notwithstanding the issuance of such injunctions the defendants and their associated (sic) and affiliates have caused false publicity to be disseminated. That the defendant union caused to be distributed to hotel employees throughout the City of Miami Beach, Florida, a handbill, copy of which is attached hereto and made a part hereof as if fully set out herein, styled Exhibit "B"; that the purpose of said handbill is to falsely imply that no strike has been called, while at the same time the defendant union and its affiliates and associates have publicized the existence of a strike. That the existence of a picket line at the Robert Richter Hotel has subjected the hotel to all of the evil connotations of a picket line and has caused the Robert Richter Hotel to be a target of the false advertising engaged in by the defendants.

Further Affiant sayeth not.

/s/ Daniel Lifter

Subscribed and sworn to before me, this 14th day of June, 1955.

/s/ Alise Broun, Notary Public, State of Florida at large—My commission expires Sept. 10, 1955.

(Seal)

[fol. 48]

EXHIBIT "A" TO AFFIDAVIT OF DANIEL LIFTER

MIAMI BEACH

Hotel Employees on Strike For Right to Bargain

Since April 13 there have been picket lines around a number of hotels in Miami Beach, Florida.

Starting with two hotels, the strike has grown and is still growing.

As of today, union employees of these 12 hotels are on strike:

RONEY PLAZA	EMPRESS	SAXONY
ALGIERS	LOMBARDY	SEA ISLE
CASABLANCA	MONTE CARLO	SHERRY FRONTENAC
DI LIDO	SANS SOUCI	SORRENTO

The Miami Beach hotel employees walked out to win one simple right, a right guaranteed by the law of the land.

They want the right to bargain collectively with their employers.

The employers refuse to recognize the union the workers established to improve their working conditions.

Both the AFL and the CIO support the Miami Beach hotel employees in their struggle for their fundamental rights as Americans. Together, the two national labor organizations represent 15,000,000 organized workers.

We and the union hotel employees who serve the guests in hotels would appreciate your support of these employees' right to organize.

BOSTON LOCAL JOINT EXECUTIVE BOARD
Hotel and Restaurant Employees and
Bartenders International Union, AFL
George H. Donovan, Sec.-Treas.

[fol. 49]

EXHIBIT "B" TO AFFIDAVIT OF DANIEL LIFTER

TO ALL HOTEL EMPLOYEES:

IN ORDER TO TRY and comply with the latest ruling of Judge Charles A. Carroll, as expressed in the case of the Hotel DiLido, we are compelled to CHANGE OUR TACTICS.

We appeal to every hotel employee who is NOT NOW A MEMBER of the Union to join the Hotel Employees Union, Local 255, American Federation of Labor.

ALL THOSE EMPLOYEES WHO ARE MEMBERS OF THE UNION AND WHO HAVE NOT WALKED OUT AS OF MAY 26, 1955, ARE REQUESTED TO REMAIN ON THEIR JOBS and TO CONTINUE TO WORK BEHIND THE PICKET LINES. EMPLOYEES ARE FURTHER REQUESTED TO TRY AND PERSUADE ALL NON-UNION EMPLOYEES TO JOIN THE UNION.

WE REALIZE THAT IT IS UNUSUAL FOR A UNION TO REQUEST ITS MEMBERS TO WORK BEHIND A PICKETLINE BUT THIS IS AN UNUSUAL SITUATION AND WE MUST FOLLOW THIS COURSE.

HOTEL EMPLOYEES UNION, LOCAL 255
American Federation of Labor

1575 Washington Avenue Miami Beach, Fla.

- Je 8-0539 -

[fol. 50]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 18041-2-D

[Title omitted]

AFFIDAVIT OF HERBERT NADEAU

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Herbert Nadeau, who, being by me first duly sworn, deposes and says:

That he has read the copy of affidavit which is attached hereto as Exhibit "A", and made a part hereof as if fully set out herein, and Affiant avers that the facts therein alleged insofar as they relate to a phone call to Circle 57000 on June 14, 1955, are true and correct. Affiant further avers that during the course of the conversation which transpired in said phone call, he was listening to the same on a telephone and that the individual answering the phone at Circle 57000 specifically stated that the Robert Richter Hotel was one of numerous hotels on strike.

Further Affiant sayeth not.

/s/ Herbert Nadeau

Subscribed to and sworn before me, this 14th day of June, A. D. 1955.

/s/ Alise Broun, Notary Public, State of Florida at large. My Commission expires Sept. 10, 1955.

(N P SEAL)

[fol. 51]

EXHIBIT "A" TO AFFIDAVIT OF HERBERT NADEAU

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180445

MARTINIQUE HOTEL, INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL 255, (AFL) et al.,
Defendants.

AFFIDAVIT OF GORDON JESSE

State of Florida,
County of Dade, ss.:

Before me the undersigned authority this day personally appeared GORDON JESSE, who after being duly sworn, deposes and says that he is General Manager of the Martinique Hotel, Miami Beach, Florida; that on June 13, 1955, at approximately 3 P. M. he received a long distance telephone call from a Mr. Nat Weisen of 130 West 12th Street, New York, New York who had made reservations at the Martinique Hotel commencing June 22nd, 1955; that the said Mr. Weisen informed your affiant that he had heard a radio broadcast to the effect that the hotels in Miami Beach, Florida were on strike and that it was difficult to obtain any service whatsoever in a hotel that was on strike; he further informed the affiant that the radio station advised calling New York, Circle 5-7000 for further information; that affiant on June 14th, 1955 at approximately 1 P. M. called New York, Circle 5-7000 and asked for information about the so-called hotel strike in Miami Beach, Florida, and what was the condition of the services being rendered; that the lady who answered the telephone, who later identified herself as Miss Milton, informed the affiant of the names of the hotels which were on strike and

[fol. 52] in so doing named the Martinique Hotel along with approximately twenty other hotels; that the said Miss Milton answering the telephone at Circle 5-7000 informed the affiant that it was the New York office of the Hotel Employees Union, and she further stated that she definitely would not recommend going to any hotel which he had listed as being on strike, but recommended patronizing hotels which were not on strike; that she further informed your affiant that she did not know the names of the hotels who were not on strike but she would turn the affiant over to a gentlemen who handled such matters; that this gentleman, however, was out to lunch at the time.

Gordon Jesse (SEAL)

SWORN TO AND SUBSCRIBED BEFORE ME,
this 14th day of June, A. D. 1955

Herbert F. Nadeau
Notary Public, State of Florida
My commission expires: Dec. 12, 1955

State of Florida,
County of Dade, ss.:

Before me the undersigned authority this day personally appeared Doris Gillis, who after being duly sworn, disposes and says that she had read the foregoing affidavit of Gordon Jesse; that she listened in to the telephone call here described and the foregoing facts are true.

Doris Gillis (SEAL)

SWORN TO AND SUBSCRIBED BEFORE ME,
this 14th day of June, A. D. 1955.

Herbert F. Nadeau
Notary Public, State of Florida
My Commission expires: Dec. 12, 1955

[fol. 53]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180412-D

[Title omitted]

ANSWER—Filed June 16, 1955

Come Now the defendants and make this their Answer to the complaint and answering, say:

1. That they admit the identity of the parties hereto as alleged in Paragraph 1.

2. That they are without knowledge as to the matters and things set forth in Paragraph 2, but aver that if the said hotel enjoys a fine reputation and valuable good will that such asset has been created in large measure by the excellence of performance by the many employees of said hotel while said employees are yet not recognized by the plaintiff through their duly designated representative of their own choosing, to-wit: Hotel Employees' Union Local No. 255; and that the purpose of this instant litigation is to deprive the said employees who have contributed so richly to the success of plaintiff hotel of their constitutional and statutory guarantees of being represented for collective bargaining purposes by representatives of their own choosing.

3. Defendants aver that the plaintiffs employ approximately fifty employees coming within the jurisdiction of the defendant union. Defendants deny the remaining allegations of Paragraph 3 of the complaint and would aver that the employees of plaintiff's hotel have long been dissatisfied with their wages, working conditions and other phases of the employer-employee labor relationship and aver that plaintiff has suffered a large turnover in the employees because of the sub-standard rate of pay, working [fol. 54] conditions, adjustment of grievances and other inter-related factors; and would aver that the many complaints on the part of the employees have been properly

brought to the representatives of their own choosing as guaranteed by law, to-wit: Hotel Employees' Union Local No. 255, A. F. of L.; but that plaintiff hotel has at all times refused to negotiate or settle the many difference and grievances existing and under which the employees are now suffering.

4. Defendants deny each and every the material allegations of Paragraph 4 as though each such allegation was herein set forth and separately and categorically denied.

5. Defendants deny each and every of the material allegations of Paragraph 5 and to the contrary aver that they have never at any time attempted to gain recognition on behalf of employees who are not members of the defendant union.

6. Defendants deny each and every of the material allegations of Paragraph 6 and would aver that these defendants have long sought a conference with plaintiffs whereby these defendants could by reasonable and responsible methods or evidence, establish the fact that the defendant union has been designated as the lawful bargaining representative by a large portion of its employees, in fact, an overwhelming majority of those employees, within the jurisdiction of defendant union.

Defendants further state that they did request Mr. Paul J. Weiss, certified public accountant of the State of Florida, to examine the books and records of defendant union to ascertain to his own satisfaction the number of employees of the plaintiffs, who have designated defendant union as their bargaining agent, and who are members of defendant union. That said Paul J. Weiss, Certified Public Accountant, did on the 2d day of June, 1955, determine such facts and did certify that forty employees of plaintiffs were members of Local No. 255 and have designated Local No. 255 as their collective bargaining agent. Such certification was duly sworn to and certified before a Notary Public of the State of Florida.

Defendants further aver that an executed and notarized [fol. 55] copy of such certification was delivered to the plaintiffs on the 2nd day of June, 1955, together with a

letter duly signed by David Herman, as Director of Organization of defendant union, advising plaintiffs that defendant union represents a substantial number of plaintiffs' employees as shown by the above referred to certification. Said letter further advised plaintiffs that such employees represented by defendant union have certain grievances and complaints. Said letter further had attached to it a list of "requests to settle grievances and complaints". Said letter further requested plaintiffs to meet with a representative of the employees of plaintiffs who had designated Local No. 255 as their bargaining agent to settle such grievances and complaints. Plaintiffs were further advised by such letter that in the event they desired such grievances and complaints would be submitted to a mutually satisfactory arbitrator or to an arbitrator designated and selected by the American Arbitration Association, with both parties to abide by the rules of such arbitrator.

Plaintiffs were advised that under no circumstances did defendant union desire or would defendant accept any type of contract or agreement which would either expressly or by implication force plaintiffs' employees to designate defendant union or any organization or any individual as the bargaining agent of its employees or which would in any way compel plaintiffs' employees to become members of defendant union or any other organization.

Plaintiffs were further advised that unless plaintiffs agreed by some affirmative response by June 7, 1955, it would be understood that plaintiffs did not wish to meet to negotiate or adjust the differences between the parties.

Plaintiffs were further advised that in the event of negative response or no response that defendant union would then feel free to take whatever action that would protect the interest of its members, including publicizing the facts and picketing. A true and exact copy of such letter dated June 2, 1955, together with certification of Paul J. Weiss, Certified Public Accountant and list of requests to settle grievances and complaint, are attached hereto and made a part hereof as fully as if set forth in their entirety herein. [fol. 56] Defendants further state that they did receive a certain letter dated June 7, 1955, signed by plaintiff,

Morris Lansburgh on behalf of Robert Richter Hotel setting forth that "Upon receipt of the names of the employees you claim to represent, together with trustworthy proof that said employees have designated your union to represent them, we shall communicate with you regarding this matter".

Defendants further state that such reply was not made in good faith in that the certification referred to above by a certified public accountant of the State of Florida had been previously sent and that a list of the names of the employees who are members of defendant union, was an unreasonable, arbitrary and capricious demand made solely for the purpose of assisting the plaintiffs in retaliatory discrimination against the said union member-employees.

Defendants further state that such certification by a certified public accountant of the State of Florida is certainly trustworthy proof concerning the designation by its employees; and no other method has ever been suggested by plaintiffs.

Defendants further state that said letter of June 7, 1955, was not an affirmative response to the said letter of defendant union dated June 2, 1955, in that plaintiffs while demanding additional proof regarding the designation by their employees, did not agree or affirmatively state that they would negotiate provided such new demands were met. On the contrary, plaintiffs stated merely that if such demands were met they would "communicate" with defendant union. It is obvious, therefore, that plaintiffs are continuing to "stall" and have adopted the hypocritical attitude that they doubt the union representation, notwithstanding the direct representations made to plaintiffs and the common knowledge of the entire community, of which this Court may now take judicial knowledge. Defendants deny each and every material allegation of Paragraph 6 not specifically admitted herein, as though each such allegation was herein set forth and separately and categorically denied.

7. Defendants deny each and every of the material allegations, if any, of Paragraph 7 as fully and completely as though each such allegation was herein set forth sep-

[fol. 57] arately and each separately and categorically denied, excepting, however, that these defendants aver that plaintiff, in unison with many of the other hotels of the City of Miami Beach, Florida, has set upon a calculated course to deprive the employees in the hotel industry of Miami Beach of their constitutional and statutory guarantees of freedom of speech, the right to bargain collectively with their employer through representatives of their own choosing and to hold in peonage the working people in the hotel industry and that plaintiff has entered into a conspiracy with the other hotels of Miami Beach, which are members of the Miami Beach Hotel Association, to deprive the employees of the hotel industry of their rights as aforesaid and as overt acts of said conspiracy, your defendants would show that these plaintiffs in concert with the other members of the Hotel Owners' Association are blacklisting union members through the hotel industry and in the Robert Richter Hotel, coercing and intimidating other hotel employers to refuse to deal with defendant union, notwithstanding the representation by this defendant union of such employers' employees, by intimidating, coercing and threatening other employers with reprisals in the event that such other employers recognize, negotiate or enter into any contract with defendant union, notwithstanding the representation by this defendant union of such employers' employees.

Defendants deny that they have engaged in vandalism and violence in other hotels which have been picketed and would show that no vandalism or violence has been shown in any of the litigation that is now pending in the several divisions of the Circuit Court of the Eleventh Judicial Circuit or otherwise; and defendants deny each and every of the remaining material allegations of Paragraph 7.

8. Defendants deny each and every of the material allegations of Paragraph 8 as fully and completely as though each such allegation were herein at this point set forth and separately and categorically denied.

9. Defendants deny Paragraph 9 of the complaint and would show to the contrary that a majority of the employees within the jurisdiction of this union belong to

defendant union and have designated it their bargaining agent and that a certificate by a Certified Public Accountant [fol. 58] has been duly served upon plaintiffs, revealing the fact that the records of the union showing that forty of the employees of plaintiff have so designated the union their bargaining agent and notwithstanding service of this finding by a Certified Public Accountant together with a request to negotiate on behalf of such employees, as is more particularly set forth in Exhibits 1 and 2 attached hereto and made a part hereof as though herein at this point set forth in haec verba, the plaintiff has unlawfully and willfully refused to confer or agree to negotiate or otherwise recognize the lawful bargaining agent of its employees and is thereby unlawfully depriving them of the representation guaranteed to them by the Statutes of the State of Florida.

10. Defendants deny each and every of the material allegations of Paragraph 10 as fully and completely as though each such allegation were herein at this point set forth and each separately and categorically denied.

11. And your defendants would show that the plaintiff seeks to maintain this litigation in a court of equity and good conscience with unclean hands, for that the plaintiff has denied to its many employees the statutory and constitutional guarantees of representation and collective bargaining as afore set forth and are endeavoring to frustrate and to bring to naught the provisions of the aforesaid statutory constitutional clauses and enactments, contrary to equity and good conscience.

That your defendant union as the spokesman and representative of its members who are employed by plaintiff, has long sought to bring about negotiations and the plaintiff has failed and refused to respond to the invitations and solicitations of this defendant union, acting on behalf of its members and that the picketing became necessary in order to appeal to the friends and sympathizers of the members of defendant union who are employed by plaintiff, as aforesaid; that in the utmost of good faith, your defendant union has invited plaintiff to hold an election

by secret ballot under any fair and impartial authority and by such secret ballot, demonstrate to plaint[illegible] the bona fides of defendant union's assertion concerning representa-
[fol. 59] tion.

That plaintiff seeks to deprive these defendants and the members of defendant union of the constitutional guarantee of freedom of speech, as provided for in Article 1 and 14 Bill of Rights, Constitution of the United States of America and the similar provisions of the Declaration of Rights of the Constitution of the State of Florida, and the guarantee of Chapters 447.03 and 447.13 Laws of the State of Florida.

And defendants would respectfully show unto this Honorable Court that the allegations of the complaint and the prayer for relief in said complaint predicated upon the allegations therein seek only to deprive your defendants of their constitutional guarantees of freedom of speech and to impose upon the individual members of the defendant union an involuntary servitude contrary to the provisions of the 1st, 13th and 14th Amendments of the Constitution of the United States of America. Granting the prayer of plaintiff's petition would result in abridging and depriving of these defendants and each and every member of defendant union and each and every person enjoined of his or her Constitutional right to speak freely his opinions and to communicate facts and to refrain from working individually or in concert with others, contrary to the aforesaid Constitutional provisions. Defendants further state that in the event the provisions of any Statute of the State of Florida are applied to the facts of this instant cause so as to grant the relief prayed for by the plaintiffs, the same would result in denying to these plaintiffs, all members of the defendant union, and all other persons enjoined the guarantees of the Constitution of the United States and of the Constitution of the State of Florida, as aforesaid.

Wherefore, your defendant union prays this Honorable Court that should this Honorable Court desire to ascertain the fact of the representation by defendant union through the process of the Court, that a Commissioner be appointed

to hold an election among the plaintiff's employees, to ascertain and report to this Honorable Court the truth and accuracy of the statements in plaintiff's petition as to the representation by defendant union of employees of plaintiffs and that this Honorable Court enter its Declaratory Decree, declaring this union to be in fact the duly [fol. 60] authorized representative of the majority of plaintiff's employees within the jurisdiction of defendant union, and that upon judicial ascertainment and Declaratory Decree, that this Honorable Court by its mandatory injunction, require the plaintiff to negotiate and bargain in good faith with this union on behalf of the members of the union, who are the employees of plaintiff, as is contemplated by Chapter 447 of the Laws of the State of Florida, together with Section 12 of the Bill of Rights, Constitution of the State of Florida and to deny the relief sought in the original complaint.

Gramling & Gramling, J. W. Brown, Ben Gettler, Solicitors for Defendants, By Carrington Gramling, 224 Shoreland Building, Miami, Florida.

Duly sworn to by Clarence L. Smith, jurat omitted in printing.

Certificate of service (omitted in printing).

[fol. 61]

ATTACHMENT TO ANSWER

Certification omitted. Printed side page 44 ante.

[fol. 62]

Letter, dated June 2, 1955 omitted. Printed side page 42 ante.

[fol. 64]

Letter dated June 7, 1955 omitted. Printed side page 45 ante.

[fol. 65]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-D

[Title omitted]

AFFIDAVIT OF HERBERT SCHIFFMAN

State of Florida,
County of Dade, ss.:

Personally Appeared Before Me the undersigned authority, Herbert Schiffman, who being by me duly sworn, deposes and states as follows:

Affiant is a resident of Dade County, Florida and has been a resident since 1952. On approximately the 1st day of June, 1955, at or about 12:00 o'clock Noon, I was engaged in a conversation with the maitre d' hote of the Robert Richter Hotel. The conversation got around to Harry Bartley, a waiter at the Robert Richter Hotel. John, the maitre d' hote told me that he intended to fire Harry Bartley, unless he ceased any type of union activity. I have learned that in less than a week after that conversation, Harry Bartley was discharged. The maitre d' hote further advised me in that conversation that he intended to get rid of Ann Mary Perpich as soon as he could get a good excuse to let her go because she also was engaged in union activity.

Further Affiant Sayeth Not.

/s/ Herbert Schiffman

Sworn to and subscribed before me at Miami, this 15 day of June, 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large. My commission expires: Aug. 20, 1955.

(SEAL)

[fol. 66]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY No. 180412-D

[Title omitted]

AFFIDAVIT OF HARRY BARTLEY

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Harry Bartley, who being by me first duly sworn, deposes and states as follows:

Affiant is a resident of Dade County, Florida and was employed at the Robert Richter Hotel from December 14, 1954 until June 8, 1955, as a waiter. The working conditions at the Hotel were extremely unsatisfactory; there was constant pressure from management; the pay was $2.00 per day. The hours for that pay were from 8:00 o'clock A. M. to 1:30 o'clock P. M., and from 4:00 o'clock P. M. to 9:00 o'clock P. M.; on some days I was required to work from 8:00 o'clock A. M. to 4:00 o'clock P. M., and also from 5:00 o'clock P. M. to 9:00 o'clock P. M. On such days I received $3.00 per day. I worked as a waiter both in the dining-room and in room service. In spite of my dissatisfaction I performed all work at all times in a capable and efficient manner. To my knowledge there have never been any complaints by patrons concerning my services.

On April 13, 1955, I joined Hotel Employees' Union, Local No. 255. At the same time I designated that Union to be my collective bargaining agent in all matters concerning wages, hours and working conditions. I did so in order to attempt to improve my working conditions. No one ever threatened or coerced me into joining Local 255; [fol. 67] on the contrary, I did so of my own free will and volition. I have at various times spoken to other employees in regard to joining the Local Union. Such discussions have been friendly and solely in an effort to persuade others to my point of view in the normal American, democratic way; also I was endeavoring to enlighten

others in regard to the meaning and purpose of the Union. I never at any time threatened anyone or endeavored to coerce anyone in regard to their joining the Union since I believe the joining or not joining of a Union is a matter for each individual to decide for himself. Specifically, at no time, did I make any threats to Helen Luska, who I understand has made an affidavit, in this case.

Such discussions were at times and places so as not to interfere in any way either with my work or with their work or with the performance of any duties for the Hotel whatsoever.

I know that a great majority of the employees of the Robert Richter Hotel are dissatisfied with their wages, hours and working conditions and desire Local No. 255 to represent them to try to improve their wages, hours and working conditions.

After joining the Union I made no secret of the fact that I was a Union member, although I knew that this might put my job in jeopardy.

I was told on various occasions during the several weeks before I was fired that I had better not go to other portions of the Hotel since they did not want me talking to others concerning joining the Union. I was told this by my head waiter, John Fitzsimmons. Mr. Bent, the manager, knew that I was a Union member and had some conversations with me in regard to it. I knew that they were looking for an opportunity to discharge me because of my membership in the Union and I was particularly careful not to do anything to give them an excuse. Finally, on June 8, 1955, I came in to work at 10 minutes before 8:00 o'clock A. M. I was scheduled to begin work at 8:00 o'clock A. M. I was advised that I was late for work and therefore fired.

[fol. 68] Further Affiant Sayeth Not.

/s/ Harry B. Bartley

Sworn to and subscribed before me this 15th day of June, A. D. 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large. My commission expires August 20, 1955.

(Seal)

[fol. 69]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-D

[Title omitted]

AFFIDAVIT OF HERMENE GILDO VALENTIN

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Hermene Gildo Valentin, who being first duly sworn, deposes and says:

I am a resident of Dade County, Florida and am now employed as a pantryman, at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida.

I know that a majority of the employees have disputes and complaints with management and are dissatisfied with the conditions of their employment. In order to improve my wages, hours and working conditions, I joined Hotel Employees Union Local No. 255 and I have designated that union to represent me. I desire that it represent me in all phases of labor management relationship. I know that a substantial number of the employees of the hotel also desire Local No. 255 to represent them in all their labor manage-[fol. 70] ment relations and to endeavor to improve their wages, hours and working conditions. In fact, I believe that a majority of the employees desire this.

No one has ever made any threats to my knowledge to any employee of the Robert Richter Hotel to force anyone to join the Union. On the contrary, there is a general feeling among everyone at the Robert Richter Hotel that management strongly desires that we do not join a union and that in fact, coercion and intimidation would probably result if our membership in Local 255 were known. For this reason, each of us, including the undersigned, has insofar as possible, kept our membership secret and we realize that by the signing of this affidavit, we jeopardize and imperil our employment, but I have nonetheless freely

and voluntarily appeared before this notary public in order to make this sworn statement.

Further Affiant Sayeth Not.

/s/ Hermene Gildo Valentin

Sworn to and subscribed before me at Miami, Florida, this 15th day of June, 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large, My commission expires: Aug. 20, 1955.

(Seal)

[fol. 71]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-D

[Title omitted]

AFFIDAVIT OF LOUIS A. GONZALEZ

State of Florida,
County of Dade, ss.:

Personally appeared before me, the undersigned authority, Louis A. Gonzalez, who being first duly sworn, deposes and says:

I am a resident of Dade County, Florida and am now employed as a kitchen help, at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida.

I know that a majority of the employees have disputes and complaints with management and are dissatisfied with the conditions of their employment. In order to improve my wages, hours and working conditions, I joined Hotel Employees Union Local No. 255 and I have designated that union to represent me. I desire that it represent me in all phases of labor management relationship. I know that a substantial number of the employees of the hotel also desire Local No. 255 to represent them in all their labor [fol. 71] management relations and to endeavor to improve their wages, hours and working conditions. In fact, I believe that a majority of the employees desire this.

No one has ever made any threats to my knowledge to any employee of the Robert Richter Hotel to force anyone to join the Union. On the contrary, there is a general feeling among everyone at the Robert Richter Hotel that management strongly desires that we do not join a union and that in fact, coercion and intimidation would probably result if our membership in Local 255 were known. For this reason, each of us, including the undersigned, has insofar as possible, kept our membership secret and we realize that by the signing of this affidavit, we jeopardize and imperil our employment, but I have nonetheless freely and voluntarily appeared before this notary public in order to make this sworn statement.

Further Affiant Sayeth Not.

/s/ Louis A. Gonzalez

Sworn to and subscribed before me at Miami, Florida, this 15th day of June, 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large, My commission expires: Aug. 15, 1955.

(Seal)

[fol. 73]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-D

[Title omitted]

AFFIDAVIT OF MARIO DIAZ QUIROZ

State of Florida,
County of Dade, ss.:

Personally Appeared Before Me, the undersigned authority, Mario Diaz Quiroz, who being first duly sworn, deposes and says:

I am a resident of Dade County, Florida and have been employed as a Dishwasher, at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida.

I know that a majority of the employees have disputes and complaints with management and are dissatisfied with the conditions of their employment. In order to improve my wages, hours and working conditions, I joined Hotel Employees Union Local No. 255 and I have designated that union to represent me. I desire that it represent me in all phases of labor management relationship. I know that a substantial number of the employees of the hotel also desire Local No. 255 to represent them in all their [fol. 74] labor management relations and to endeavor to improve their wages, hours and working conditions. In fact, I believe that a majority of the employees desire this.

No one has ever made any threats to my knowledge to any employee of the Robert Richter Hotel to force anyone to join the Union. On the contrary, there is a general feeling among everyone at the Robert Richter Hotel that management strongly desires that we do not join a union and that in fact, coercion and intimidation would probably result if our membership in Local 255 were known. For this reason, each of us, including the undersigned, has insofar as possible, kept our membership secret and we realize that by the signing of this affidavit, we jeopardize and imperil our employment, but I have nonetheless freely and voluntarily appeared before this notary public in order to make this sworn statement.

Further Affiant Sayeth Not.

/s/ Mario Diaz Quiroz

Sworn to and subscribed before me at Miami, Florida, this 15th day of June, 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large. My commission expires: Aug. 15, 1955.

[fol. 75]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-D

[Title omitted]

AFFIDAVIT OF ANN MARY PERPICK

State of Florida,
County of Dade, ss.:

Personally Appeared Before Me, the undersigned authority, Ann Mary Perpick, who being first duly sworn, deposes and says:

I am a resident of Dade County, Florida and am now employed as a Waitress, at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida.

I know that a majority of the employees have disputes and complaints with management and are dissatisfied with the conditions of their employment. In order to improve my wages, hours and working conditions, I joined Hotel Employees Union Local No. 255 and I have designated that union to represent me. I desire that it represent me in all phases of labor management relationship. I know that a substantial number of the employees of the hotel also desire Local No. 255 to represent them in all their labor [fol. 76] management relations and to endeavor to improve their wages, hours and working conditions. In fact, I believe that a majority of the employees desire this.

No one has ever made any threats to my knowledge to any employee of the Robert Richter Hotel to force anyone to join the Union. On the contrary, there is a general feeling among everyone at the Robert Richter Hotel that management strongly desires that we do not join a union and that in fact, coercion and intimidation would probably result if our membership in Local 255 were known. For this reason, each of us, including the undersigned, has insofar as possible, kept our membership secret and we realize that by the signing of this affidavit, we jeopardize and imperil our employment, but I have nonetheless freely

and voluntarily appeared before this notary public in order to make this sworn statement.

Further Affiant Sayeth Not.

/s/ Ann Mary Perpick

Sworn to and subscribed before me at Miami, Florida, this 15th day of June, 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large. My commission expires: Aug. 15, 1955.

(N P Seal)

[fol. 77]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-D

[Title omitted]

AFFIDAVIT OF FRANCES BUBEN

State of Florida,
County of Dade, ss.:

Personally Appeared Before Me, the undersigned authority, Frances Buben, who being first duly sworn, deposes and says:

I am a resident of Dade County, Florida and am now employed as a Maid, at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida.

I know that a majority of the employees have disputes and complaints with management and are dissatisfied with the conditions of their employment. In order to improve my wages, hours and working conditions, I joined Hotel Employees Union Local No. 255 and I have designated that union to represent me. I desire that it represent me in all phases of labor management relationship. I know that a substantial number of the employees of the hotel also desire Local No. 255 to represent them in all labor manage-
[fol. 78] ment relations and to endeavor to improve their

wages, hours and working conditions. In fact, I believe that a majority of the employees desire this.

No one has ever made any threats to my knowledge to any employee of the Robert Richter Hotel to force anyone to join the Union. On the contrary, there is a general feeling among everyone at the Robert Richter Hotel that management strongly desires that we do not join a union and that in fact, coercion and intimidation would probably result if our membership in Local 255 were known. For this reason, each of us, including the undersigned, has insofar as possible, kept our membership secret and we realize that by the signing of this affidavit, we jeopardize and imperil our employment, but I have nonetheless freely and voluntarily appeared before this notary public in order to make this sworn statement.

Further Affiant Sayeth Not.

/s/ Frances Buben

Sworn to and subscribed before me at Miami, Florida, this 15th day of June, 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large. My commission expires: Aug. 15, 1955.

(N P. Seal)

[fol. 79]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-D

[Title omitted]

AFFIDAVIT OF M. R. LOZANO

State of Florida,
County of Dade, ss.:

Personally Appeared Before Me, the undersigned authority, M. R. Lozano, who being first duly sworn, deposes and says:

I am a resident of Dade County, Florida and am now employed as a dishwasher, at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida.

I know that a majority of the employees have disputes and complaints with management and are dissatisfied with the conditions of their employment. In order to improve my wages, hours and working conditions, I joined Hotel Employees Union Local No. 255 and I have designated that union to represent me. I desire that it represent me in all phases of labor management relationship. I know that a substantial number of the employees of the hotel also desire [fol. 80] Local No. 255 to represent them in all their labor management relations and to endeavor to improve their wages, hours and working conditions. In fact, I believe that a majority of the employees desire this.

No one has ever made any threats to my knowledge to any employee of the Robert Richter Hotel to force anyone to join the Union. On the contrary, there is a general feeling among everyone at the Robert Richter Hotel that management strongly desires that we do not join a union and that in fact, coercion and intimidation would probably result if our membership in Local 255 were known. For this reason, each of us, including the undersigned, has insofar as possible, kept our membership secret and we realize that by the signing of this affidavit, we jeopardize and imperil our employment, but I have nonetheless freely and voluntarily appeared before this notary public in order to make this sworn statement.

Further Affiant Sayeth Not.

/s/ M. R. Lozano

Sworn to and subscribed before me at Miami, Florida, this 15th day of June, 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large. My commission expires: Aug. 15, 1955.

(N P Seal)

[fol. 81]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180412-D

[Title omitted]

AFFIDAVIT OF NATHAN SHUMOWITZ

State of Florida,
County of Dade, ss.:

Personally Appeared Before Me, the undersigned, authority, Nathan Shumowitz, who being first duly sworn, deposes and says:

I am a resident of Dade County, Florida and am now employed as a Waiter, at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida.

I know that a majority of the employees have disputes and complaints with management and are dissatisfied with the conditions of their employment. In order to improve my wages, hours and working conditions, I joined Hotel Employees Union Local #255 and I have designated that union to represent me. I desire that it represent me in all phases of labor management relationship. I know that a substantial number of the employees of the hotel also desire [fol. 82] Local No. 255 to represent them in all their labor management relations and to endeavor to improve their wages, hours and working conditions. In fact, I believe that a majority of the employees desire this.

No one has ever made any threats to my knowledge to any employee of the Robert Richter Hotel to force anyone to join the Union. On the contrary, there is a general feeling among everyone at the Robert Richter Hotel that management strongly desires that we do not join a union and that in fact coercion and intimidation would probably result if our membership in Local 255 were known. For this reason, each of us, including the undersigned, has insofar as possible, kept our membership secret and we realize that by the signing of this affidavit, we jeopardize and imperil our employment, but I have nonetheless freely and

voluntarily appeared before this notary public in order to make this sworn statement.

Further Affiant Sayeth Not.

/s/ Nathan Shumowitz

Sworn to and subscribed before me at Miami, Florida, this 16th day of June 1955.

/s/ Mildred E. Eckelkamp, Notary Public, State of Florida at Large. My Commission Expires Jan. 28, 1958. Bonded by American Fire & Casualty Co.

(N P Seal)

[fol. 83]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180412-D

[Title omitted]

AFFIDAVIT OF JOSE CAMBRA

State of Florida,
County of Dade, ss.:

Personally Appeared Before Me, the undersigned authority, Jose Cambra, who being first duly sworn, deposes and says:

I am a resident of Dade County, Florida and am now employed as a Waiter, at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida.

I know that a majority of the employees have disputes and complaints with management and are dissatisfied with the conditions of their employment. In order to improve my wages, hours and working conditions, I joined Hotel Employees Union Local #255 and I have designated that union to represent me. I desire that it represent me in all phases of labor management relationship. I know that a substantial number of the employees of the hotel also desire [fol. 84] Local No. 255 to represent them in all their labor management relations and to endeavor to improve their

wages, hours and working conditions. In fact, I believe that a majority of the employees desire this.

No one has ever made any threats to my knowledge to any employee of the Robert Richter Hotel to force anyone to join the Union. On the contrary, there is a general feeling among everyone at the Robert Richter Hotel that management strongly desire that we do not join a union and that in fact coercion and intimidation would probably result if our membership in Local 255 were known. For this reason, each of us, including the undersigned, has insofar as possible, kept our membership secret and we realize that by the signing of this affidavit, we jeopardize and imperil our employment, but I have nonetheless freely and voluntarily appeared before this notary public in order to make this sworn statement.

Further Affiant Sayeth Not.

/s/ Jose Cambra

Sworn to and subscribed before me at Miami, Florida, this 15th day of June 1955.

/s/ Mildred E. Eckelkamp, Notary Public, State of Florida at Large. My Commission Expires Jan. 28, 1958. Bonded by American Fire & Casualty Co.

(N P Seal)

[fol. 85]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-D

[Title omitted]

AFFIDAVIT OF ELIZABETH LOPEZ

State of Florida,
County of Dade, ss.:

Personally Appeared Before Me, the undersigned authority, Elizabeth Lopez, who being first duly sworn, deposes and says:

I am a resident of Dade County, Florida and am now employed as a Assistant Housekeeper, at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida.

I know that a majority of the employees have disputes and complaints with management and are dissatisfied with the conditions of their employment. In order to improve my wages, hours and working conditions, I joined Hotel Employees Union Local #255 and I have designated that union to represent me. I desire that it represent me in all phases of labor management relationship. I know that a substantial number of the employees of the hotel also desire [fol. 86] Local No. 255 to represent them in all their labor management relations and to endeavor to improve their wages, hours and working conditions. In fact, I believe that a majority of the employees desire this.

No one has ever made any threats to my knowledge to any employee of the Robert Richter Hotel to force anyone to join the Union. On the contrary, there is a general feeling among everyone at the Robert Richter Hotel that management strongly desires that we do not join a union and that in fact coercion and intimidation would probably result if our membership in Local 255 were known. For this reason, each of us, including the undersigned, has insofar as possible, kept our membership secret and we realize that by the signing of this affidavit, we jeopardize and imperil our employment, but I have nonetheless freely and voluntarily appeared before this notary public in order to make this sworn statement.

Further Affiant Sayeth Not.

/s/ Elizabeth Lopez

Sworn to and subscribed before me at Miami, Florida, this 15th day of June 1955.

/s/ Mildred E. Eckelkamp, Notary Public, State of Florida at Large. My Commission Expires Jan. 28, 1958. Bonded by American Fire & Casualty Co.

(N P Seal)

[fol. 87]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-D

[Title omitted]

AFFIDAVIT OF ALBERT NIETO

State of Florida,
County of Dade, ss.:

Personally Appeared Before Me, the undersigned authority, Albert Nieto, who being first daly sworn, deposes and says:

I am a resident of Dade County, Florida and am now employed as a Waiter, at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida.

I know that a majority of the employees have disputes and complaints with management and are dissatisfied with the conditions of their employment. In order to improve my wages, hours and working conditions, I joined Hotel Employees Union Local #255 and I have designated that union to represent me. I desire that it represent me in all phases of labor management relationship. I know that a substantial number of the employees of the hotel also desire [fol. 88] Local No. 255 to represent them in all their labor management relations and to endeavor to improve their wages, hours and working conditions. In fact, I believe that a majority of the employees desire this.

No one has ever made any threats to my knowledge to any employee of the Robert Richter Hotel to force anyone to join the Union. On the contrary, there is a general feeling among everyone at the Robert Richter Hotel that management strongly desires that we do not join a union and that in fact coercion and intimidation would probably result if our membership in Local 255 were known. For this reason, each of us, including the undersigned, has insofar as possible, kept our membership secret and we realize that by the signing of this affidavit, we jeopardize and imperil our employment, but I have nonetheless freely and

voluntarily appeared before this notary public in order to make this sworn statement.

Further Affiant Sayeth Not.

/s/ Albert Nieto

Sworn to and subscribed before me at Miami, Florida, this 15th day of June 1955.

/s/ Mildred E. Eckelkamp, Notary Public, State of Florida at Large. My Commission Expires Jan. 28, 1958. Bonded by American Fire & Casualty Co.

(N P Seal)

[fol. 89]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-D

[Title omitted]

AFFIDAVIT OF ANGELO ORTIZ

State of Florida,
County of Dade, ss.:

Personally Appeared Before Me, the undersigned authority, Angelo Ortiz, who being first duly sworn, deposes and says:

I am a resident of Dade County, Florida and am now employed as a Dishwasher, at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida.

I know that a majority of the employees have disputes and complaints with management and are dissatisfied with the conditions of their employment. In order to improve my wages, hours and working conditions, I joined Hotel Employees Union Local #255 and I have designated that union to represent me. I desire that it represent me in all phases of labor management relationship. I know that a substantial number of the employees of the hotel also desire [fol. 90] Local No. 255 to represent them in all their labor management relations and to endeavor to improve their

wages, hours and working conditions. In fact, I believe that a majority of the employees desire this.

No one has ever made any threats to my knowledge to any employee of the Robert Richter Hotel to force anyone to join the Union. On the contrary, there is a general feeling among everyone at the Robert Richter Hotel that management strongly desires that we do not join a union and that in fact coercion and intimidation would probably result if our membership in Local 255 were known. For this reason, each of us, including the undersigned, has insofar as possible, kept our membership secret and we realize that by the signing of this affidavit, we jeopardize and imperil our employment, but I have nonetheless freely and voluntarily appeared before this notary public in order to make this sworn statement.

Further Affiant Sayeth Not.

/s/ Angelo Ortiz

Sworn to and subscribed before me at Miami, Florida, this 14th day of June 1955.

/s/ Mildred E. Eckelkamp, Notary Public, State of Florida at Large. My Commission Expires Jan. 28, 1958. Bonded by American Fire & Casualty Co.

(N P Seal)

[fol. 91]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-D

[Title omitted]

AFFIDAVIT OF JERRY WEINSTEIN

State of Florida,
County of Dade, ss.:

Personally Appeared Before Me, the undersigned authority, Jerry Weinstein, who being first duly sworn, deposes and says:

I am a resident of Dade County, Florida and am now employed as a Waiter, at the Robert Richter Hotel, 3301 Collins Avenue, Miami Beach, Florida.

I know that a majority of the employees have disputes and complaints with management and are dissatisfied with the conditions of their employment. In order to improve my wages, hours and working conditions, I joined Hotel Employees Union Local No. 255 and I have designated that union to represent me. I desire that it represent me in all phases of labor management relationship. I know that a substantial number of the employees of the hotel also desire [fol. 92] Local No. 255 to represent them in all their labor management relations and to endeavor to improve their wages, hours and working conditions. In fact, I believe that a majority of the employees desire this.

No one has ever made any threats to my knowledge to any employee of the Robert Richter Hotel to force anyone to join the Union. On the contrary, there is a general feeling among everyone at the Robert Richter Hotel that management strongly desires that we do not join a union and that in fact coercion and intimidation would probably result if our membership in Local 255 were known. For this reason, each of us including the undersigned, has insofar as possible, kept our membership secret and we realize that by the signing of this affidavit, we jeopardize and imperil our employment, but I have nonetheless freely and voluntarily appeared before this notary public in order to make this sworn statement.

Further Affiant Sayeth Not.

/s/ Jerry Weinstein

Sworn to and subscribed before me at Miami, Florida, this 16th day of June 1955.

/s/ Mildred E. Eckelkamp, Notary Public, State of Florida at Large. My Commission Expires Jan. 28, 1958. Bonded by American Fire & Casualty Co.

(N P Seal)

[fol. 93]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-D

[Title omitted]

AFFIDAVIT OF MANUEL ALFAYA

State of Florida,
County of Dade, ss.:

Personally Appeared Before Me, the undersigned authority, Manuel Alfaya, who being by me first duly sworn, deposes and says:

I am a resident of Dade County, Florida and have been employed at the Robert Richter Hotel since 1949. My address is 19 Northeast Fourth Street, Miami 32, Florida.

I am employed regularly as a second cook although from time to time I perform the duty of chef. I know that a majority of the employees have disputes and complaints with management and are dissatisfied with the conditions of their employment and I know that a substantial number of the employees of the hotel have joined Local Union No. 255, to represent them in all their labor management relations and to endeavor to improve their wages, hours and working conditions. In fact I believe that a majority of the employees have done so. I also have designated Hotel Employees Union Local No. 255 as my bargaining agent and I work under the jurisdiction of this union.

I am advised that an affidavit has been made by one of the non-union employees, presumably referring to me as the "Manuel" included in the affidavit of Helen Lusha.

It is true that I suggested to her that she join the union to improve her working conditions, but in no manner did I threaten her or anyone whomsoever. To the contrary I have entertained only friendly feelings toward my fellow employees including Helen Lusha and in fact over a period [fol. 94] of years, I have given her gifts of money from time to time and as recently as last Christmas I gave her a gift of Fifty Dollars for the purchase of a watch that she had

stated she desired. I reiterate and emphasize the fact that in no manner have I spoken in a threatening manner to anyone whomsoever.

In truth and in fact no one has ever made any threats to my knowledge to any employee of the Robert Richter Hotel to force anyone to join the union. On the contrary, there is a general feeling among everyone at the Robert Richter Hotel that management strongly desires that we do not join a union and that in fact, coercion and intimidation would probably result if our union membership were known.

In support of this, I would indicate the recent firings of known members of the union including myself on June 6, 1955, and also a waiter named Harry, two dishwashers whose names I do not know and several others. In connection with my discharge, I would further add that management has attempted to further retaliate by declining to pay me my earned vacation pay and have attempted to deprive me of unemployment compensation.

Further Affiant Sayeth Not.

/s/ Manuel Alfaya

Sworn to and subscribed before me at Miami, Florida, This 16 day of June, 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large. My commission expires: Aug. 20, 1955.

(Seal)

[fol. 95]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180412-D

[Title omitted]

AFFIDAVIT OF DAVID HERMAN

State of Florida,
County of Dade, ss.:

Before Me, the undersigned authority, this day personally appeared David Herman, residing at The Eastview Hotel,

Miami Beach, Florida, of full age, who, after being by me first duly sworn, upon his oath deposes and says:

I am Director of Organization of Hotel Employees' Union, Local 255, and have been in this position since on or about February 15, 1955. During the course of my duties as Director of Organization I have received many complaints from employees of the Robert Richter Hotel concerning the deplorable wages and working conditions existing at the Hotel. These deplorable conditions included a 7-day week, 12-hour day, no compensation for overtime, no job security, low wages and many others. On the basis of the many conversations with employees of the Robert Richter Hotel, I know that there are approximately forty-nine regular, steady employees, excluding management and management-associated employees, working within the jurisdiction of Local No. 255. As a result of these condi-[fol. 96] tions, forty of the approximately forty-nine employees of the Robert Richter Hotel authorized Hotel Employees' Local No. 255 to represent them for the purpose of collective bargaining.

Twenty-two (22) of said employees have signed application cards, have paid their initial fees and dues in full, and Union membership books have been issued to them. The applications of said twenty-two employees are attached to this affidavit and made a part hereof as fully as if set forth herein.

Approximately eighteen additional employees of the Robert Richter Hotel have signed identical application cards and said application cards are being processed by defendant Union, and Union books have not as yet been issued.

Twenty-two (22) employees of the Robert Richter Hotel have signed white cards stating, "I hereby designate Hotel Employees Union, Local No. 255 as my collective bargaining agent. I request the Union to negotiate on my behalf with my employer on all matters dealing with wages, hours and conditions of employment". Said twenty-five (25) cards are attached hereto and made a part hereof.

Fifteen (15) additional employees of the Robert Richter Hotel have signed yellow cards, stating as follows: "I, ..., an employee of the Robert Richter

Hotel do hereby designate the Miami Hotel Trades Council, consisting of affiliates of the American Federation of Labor with jurisdiction over the respective crafts unions and industrial unions in the hotels of Miami and Miami Beach, to be my duly authorized collective bargaining agent on all matters pertaining to my wages, hours and conditions of employment". Said fifteen cards are herewith attached and made a part hereof. The Miami Hotel Trades Council referred to therein includes the defendant Union, Hotel Employees' Union, Local No. 255, and a designation of said Miami Hotel Trades Council by an individual employee of the hotel working within the jurisdiction [fol. 97] of Local No. 255 is a designation of Local 255 by such employee to represent him or her for the purpose of collective bargaining. Each of the persons who signed the said cards submitted herewith are working within the jurisdiction of Local No. 255.

As a Director of Organization for Local 255, I am in charge of keeping and have custody of all applications for membership referred to above, as well as all designation cards referred to above. The cards and applications attached hereto and made a part hereof are part of the official records of Local No. 255.

When I first assumed my duties as Director of Organization I learned from the records of Local No. 255, and by being advised by various spokesmen for the Miami Beach Hotel Association, that the Miami Beach Hotel Association represented this plaintiff hotel among others, for the purpose of labor relations and dealings with any labor organizations. After I assumed my duties as Director of Organization and up to the present date, I have been similarly advised by various hotel owners as to the truth of the aforesaid statement. I was further advised as to the representation of plaintiff hotel by the Miami Beach Hotel Association by my attorney, J. Carrington Gramling, who exhibited to me the ruling of the Honorable George E. Holt in Chancery Cause No. 121214 wherein Morris Lansburgh and the Miami Beach Hotel Owners Association were defendants, in which order the various hotels of Miami Beach, who were members of the Association, were enjoined, as members of the Association from blacklisting and indulg-

ing in other unfair labor practices, which order judicially recognized Hotel Owners Association as a proper party for the purpose of enjoining its member hotels in labor matters, after the taking of testimony. The Miami Beach Hotel Owners Association referred to in said Case #121214 is the same and identical association referred to herein [fol. 98] as Miami Beach Hotel Association.

I first contacted plaintiff by contacting their representative, the executive president of Miami Beach Hotel Association, Mr. Sam Rivkind, who was also the executive president of the Association at the time of the entry of the order by Honorable George E. Holt, against the Association, as aforesaid. Such contact was on March 3, 1955 by direct conversation with the said Mr. Rivkind. I discussed with Mr. Rivkind the desires of the employees of the various member hotels of the Association to be represented in all labor-employer relation matters by Local 255, and the desires of said employees to improve their wages, hours and working conditions. Mr. Rivkind advised me that he would discuss with the Board of Directors of the Hotel Association and the owners of the various hotels involved, including plaintiff herein, the advisability of a conference for the purpose of working out an orderly procedure whereby defendant Union would be able to establish its right to bargain collectively on behalf of its members employed in the various hotels, including plaintiff hotel, based upon a secret ballot. Mr. Rivkind stated that he would endeavor to bring about a meeting between myself and such other representatives of the Union as would be designated, and a representative committee from the Hotel Association.

I next met with Mr. Rivkind on or about the 6th or 7th day of March, 1955. He advised me that he had revealed our previous conversation to a number of the members of the Miami Beach Hotel Association, including plaintiff; that he, however, was withdrawing from the executive presidency of the Association and that I should therefore continue any discussions with the President of the Association, Mr. Saul Cohen.

I met with Mr. Saul Cohen on March 20, 1955. We discussed the problem of the recognition by the Association

of its members of Local 255 as the representative of Hotel Employees Union who had designated Local 255 as their collective bargaining agent. We further discussed the possibility of improving the working conditions and standards of said employees represented by Local No. 255, increasing their wages, reducing their hours, and other matters of that specific nature. There was no decision made at that conference.

I again met with Mr. Saul Cohen on March 23, 1955. We discussed the same general problems that were discussed in [fol. 99] the meeting of March 20, 1955. I pointed out to Mr. Cohen the low wages, long hours and other unfavorable working conditions which existed in the various hotels, including plaintiff hotel, and advised him that it was our purpose to endeavor to improve those conditions for the persons who were represented by Local 255. It was generally agreed between us that the standards in said hotels, including plaintiff hotel, were very low. We discussed the example of representation of employees in New York City, whereby over a period of 17 years through a process of orderly collective bargaining, conditions had been increased multifold since 1937. I pointed out to Mr. Cohen that in New York City, although the hotel industry from the point of view of numbers of employees and number of rooms is equivalent to Miami Beach, that there has not been a serious strike, work stoppage or cessation of work in all of the time that the Union has been organized and that on the contrary, the hotel industry there was prospering simultaneously with the improvement of the conditions of the hotel employees. I also poimed out to Mr. Cohen that in every hotel where we claimed a majority, we would be willing and happy to go through an election to determine and establish that fact. I also advised him that in the event of disputes between Local 255 and the hotels, including plaintiff hotel, we would be willing in each case to submit such dispute to an impartial arbitrator to be mutually agreed upon by both parties.

Mr. Cohen replied:

"You know I can't disagree with anything you say and I wish we had hotel owners in Miami Beach. We have

got pants pressers, dress makers, everything except hotel owners, and if I come to them with any kind of proposition like that, they will think I am crazy. They will think I am working for the Union instead of being the President of the Hotel Association".

Mr. Cohen requested that I write a letter to the Secretary of the Association asking for a meeting. In accordance with the aforesaid suggestion, I wrote such a letter on behalf of Local 255; and I further advised Mr. Cohen, during the course of that conversation, that Local 255 represented a substantial number of employees of the hotels, including plaintiff hotel; in fact, I claimed that we represented a majority, which in fact we do. My statements in regard to representation were not questioned in any way. On the contrary, such representations were accepted by him.

I did not receive a reply to the letter sent to the Association referred to above; therefore, on April 10, 1955, I had published, by paid advertising in each of the three major Miami newspapers, a copy of said letter. However, I have never received to this very day, any reply whatsoever to the said letter or to the said ad.

A copy of said letter was sent to these plaintiffs on March 30, 1955.

[fol. 100] That on or about the 3d day of May, 1955, I sent a telegram to Morris Lansburgh to the Robert Richter Hotel, requesting a meeting to negotiate on behalf of the employees represented by Local No. 255. I received an answer from the Robert Richter Hotel over the signature of Morris Lansburgh suggesting a meeting in the office of Marion E. Sibley on May 12, 1955. That on or about May 10, 1955, I had a meeting with Morris Lansburgh, who advised me that he was compelled to be out of the city during the course of the next several days and suggested that our meeting scheduled for May 12 be postponed until May 20th. I asked him to write to me to that effect and that I would take the matter up with the employees of the Robert Richter Hotel. After receiving letter and taking it up with the employees of the Robert Richter Hotel, members Hotel Employees Union Local No. 255, I telephoned Mr. Morris Lansburgh and told him that it was

agreeable to the employees to have a conference on May 20th instead of May 12th. On or about May 18, 1955, I had lunch with Mr. Morris Lansburgh and Mr. Daniel Lifter, plaintiffs herein, where we discussed the conference scheduled for May 20th in the offices of Mr. Marion E. Sibley. In the light of a previous conference that was held with Mr. Marion E. Sibley involving a plaintiff hotel, which conference resulted in a walk-out on the part of the employees of that hotel, Messrs. Lansburgh and Lifter asked me to refrain arriving at any specific conclusion during the conference with Mr. Sibley so as not to break it off with the possible resultant walk-out of the employees in the Robert Richter Hotel, but rather to try and postpone the final conclusion during that conference in the hope that Messrs. Lansburgh and Lifter will then meet with us and try to work out a method for recognition of the union and negotiation of the employees' just grievances. I then met again with Mr. Morris Lansburgh and Mr. Daniel Lifter in the offices of Marion E. Sibley on May 20, 1955 and in accordance with our previous discussion, there were two alternate plans advanced for establishing Local No. 255 as a collective bargaining agent on behalf of the Robert Richter employees, who were members of the union.
[fol. 101] One plan advanced by Mr. Sibley was to the effect that the employees of the Robert Richter Hotel, each and every one of them, appear before Mr. Darry Davis, who is a partner of Mr. Sibley and Mr. J. W. Brown, counsel herein, and these employees would singly and individually be questioned as to whether or not they are members of the Hotel Employees Union Local No. 255 and/or whether they designated Local No. 255 as their collective bargaining agent. This plan was rejected by me as being an invasion of the employees' right of privacy in matters of choosing a collective bargaining agency. I advanced the alternate proposal that we follow the established practices of the National Labor Relations Board and the several State Labor Relations Board methods, which is also the method adopted for the democratic determination of any and all matters within a free society, for the determination of various questions, which consists of a secret ballot election supervised by an impartial party.

Following out the discussion held between myself and Messrs. Lansburgh and Lifter, we did not determine with any finality as to which of the two methods would be used in order not to break up the conversation. I subsequently talked to Mr. Morris Lansburgh on May 21st and we went over the conversations had in Mr. Sibley's office. I made very clear to Mr. Lansburgh that we could not agree to the plan advanced by Mr. Sibley and desired a secret ballot election as advanced by us. Mr. Lansburgh then advanced a proposition that consisted of recognizing the Hotel Employees Union Local No. 255 on behalf of its members employed in the Robert Richter Hotel, providing we withdrew our claim for representation in the Versailles Hotel, which is also owned by the corporation of which Mr. Lansburgh is an officer and provided further, that we withdrew from court the Motions to Vacate the Temporary Restraining Orders in the San Souci and Sherry Frontenac cases, both of which hotels are owned and operated by corporations of which Mr. Lansburgh is an officer. I took this proposal under serious consideration and Mr. Lansburgh in turn undertook to have the proposal adopted by his partners and/or his associates. I subsequently talked to Mr. Lansburgh on or about May 23d in which conversation he informed me that the plan above described was not [fol. 102] acceptable to his associates and he therefore could not carry it out. I then informed him that the method of determining the free choice of the employees of the Robert Richter Hotel as advanced by Mr. Marion E. Sibley was unacceptable to us and that we are at all times agreeable to an election, however, and that if he would not agree to an election, we would proceed in such manner which would best protect the interests of the members of our union, employed at the Robert Richter Hotel.

Finally, on June 2, 1955, on behalf of Local 255, I requested Mr. Paul J. Weiss, a certified public accountant of the State of Florida, to examine the books and records of Local 255 to ascertain the number of employees of the Robert Richter Hotel, which have designated Local No. 255 as their bargaining agent and who are members of Local No. 255. The said Paul J. Weiss, certified public accountant, did, on the 2d day of June, 1955, determine such

facts and did certify that 59 employees of the Robert Richter Hotel were members of Local 255 and have designated Local 255 as their collective bargaining agent. Said certification was duly sworn to and certified before a Notary Public of the State of Florida; the original of said certification was delivered to Jack Fineberg on behalf of the Robert Richter Hotel on the 2d day of June, 1955, together with the letter described in Paragraph 6 of Defendants' Answer herein. The letter and certification attached to the said Answer are exact copies of the letter and certification referred to; also, together with said letter I had delivered to Jack Fineberg, as officer of Robert Richter Hotel, a list of "requests to settle grievances and complaints"; an exact copy of such list is attached to the Answer. Said letter, certification and list are made a part of this affidavit as fully as if set forth herein.

On June 7, 1955, I received a certain letter on behalf of the Robert Richter Hotel. The exact wording of that letter, together with statements in regard to that reply are set forth in Paragraphs 7, 8, 9 and 10 of Section 6 of defendants' Answer and are attached as a part of this affidavit, as fully as if set forth herein in their entirety, said statements being true statements.

[fol. 103] On the 7th day of June, 1955, picketing commenced at the Robert Richter Hotel for all of the reasons aforesaid. Said picketing has been entirely peaceful.

On the 25th day of May, 1955, a secret ballot election was held among all employees of the plaintiff hotel working within the jurisdiction of Local 255, for the purpose of determining their desires as to representation and as to striking; said election was held under the supervision of an impartial person, not a member of the defendant union, namely, Samuel J. Geison, who is a radio broadcaster over Radio WAHR and who is a columnist for the Miami Beach publication, "Panorama". Thirty-four (34) employees of the Robert Richter Hotel working within the jurisdiction of Local 255, participated in that election and thirty-three (33) of said thirty-four (34) employees voted in favor of representation by Local 255 and in favor of a strike. This is a substantial majority of the employees of the Robert Richter Hotel working within the jurisdiction of Local

255 and who would be affected by any strike, walk-out or cessation of work at plaintiff hotel. Said ballots are attached hereto.

The plaintiffs, in the operation of said hotel, are engaged in a business which affects interstate commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida, and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state bus lines, inter-state and international steamship companies, and by passenger automobiles. Said business further is part of "package deal". Arrangements with said various inter-state and International airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Trans-World Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular & Occidental Steamship Company, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, [fol. 104] Southern Railway System, Florida East Coast Railway, Atlantic Coastline Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus lines companies including Greyhound Bus Lines Company, Trailways Bus System and various other inter-state bus line companies. Said "package deal" arrangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by plaintiffs and said inter-state carriers. All expense incurred in promoting,

making and consummating said inter-state and international sales are jointly shared by plaintiffs, and said inter-state and international carriers. The proceeds of said inter-state and international sales are divided between plaintiff, as operator of said hotel and said inter-state and international carriers.

Said plaintiffs, as a part of the operation of said hotel, purchases numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said plaintiffs, as a part of the operation of said hotel, sell directly outside of the State of Florida and within the State of Florida for carriage or re-sale, outside of the State of Florida. Said plaintiffs as part of the operation of said hotel, advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the states of the United States outside the State of Florida and in various countries outside of the United States. Further Affiant Sayeth Not.

/s/ David Herman

Sworn to and subscribed before me, this 16th day of June, 1955.

/s/ Sylvia R. Lathero, Notary Public, State of Florida at Large. My commission expires: August 20, 1955.

(Seal)

[fol. 106]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-C

[Title omitted]

PRELIMINARY INJUNCTION—June 17, 1955

Plaintiffs' application for preliminary injunction came on for hearing before the Court, after notice, on the sworn bill of complaint and affidavits filed by the Plaintiffs in support of the application, and the sworn answer of the

Defendants and counter-affidavits filed by the Defendants in opposition to the application. Arguments of counsel for the respective parties were heard.

Whereupon, It Is Ordered that the application and prayer for a preliminary injunction is granted for the reason that it affirmatively appears from the pleadings filed in this Court and the affidavits and counter-affidavits filed that the Plaintiffs did not refuse to negotiate with the Defendants, but that the Defendants failed to provide the Plaintiffs with substantial or satisfactory proof or evidence that would establish to the Plaintiffs that the defendants had been designated as the collective bargaining agent for the Plaintiffs' employees. It further appears from the record in this cause that the Defendants engaged in picketing for an illegal purpose, that of forcing the employees of the Robert Richter Hotel to designate the union or the individual defendants as their bargaining agent and to coerce the owners of the hotel, through economic sanction, to sign a contract with the union and to [fol. 107] use said contract as a basis to compel the employees of the Plaintiffs to become members of the defendant union.

Accordingly, It Is Ordered as follows:

1. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from picketing or causing to be picketed the Robert Richter Hotel and Cabana Club, its environs or approaches.

2. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from carrying or causing to be carried any signs, placards or propaganda of any nature, kind or description in front of the Robert Richter Hotel and Cabana Club, its environs or approaches.

3. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from publishing or causing

to be published any statements to the effect that a strike or lockout is in effect at the Robert Richter Hotel or Cabana Club, or that the plaintiffs, Morris Lansburgh and Daniel Lifter, refuse to negotiate or recognize the defendants as a collective bargaining agent of the employees of the Robert Richter Hotel.

4. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants be and they are hereby enjoined and restrained from molesting, interfering with, intimidating, coercing or directing any violence toward the Plaintiffs, Morris Lansburgh and Daniel Lifter, their property, their employees or servants.

5. The Plaintiffs, or one of them, shall file herein an injunction bond, payable to the defendants in the principal [fol. 108] amount of $2,000.00, with good and sufficient surety to be approved by the Clerk of this Court, and conditioned as required by law, to pay all costs, damages and expenses which may be suffered by defendants by reason of the issuing of said injunction, if the injunction shall be dissolved or if the bill upon which it was granted be dismissed.

6. This order shall remain in force and effect pending this cause and until further order of this Court.

Done and Ordered, in Chambers, at Miami, Florida, this 17th day of June, A. D. 1955.

Charles A. Carroll, Circuit Judge.

[fol. 109]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY No. 180412-C

[Title omitted]

SUPPLEMENTAL ANSWER—Filed June 28, 1955

Come Now the defendants and make this their Supplemental Answer and would respectfully show unto this Honorable Court that this Court is without jurisdiction to act in the cause for the reason that the plaintiffs in opera-

tion of said hotel are engaged in a business which affects inter-state commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said Hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state bus lines, inter-state and international steamship companies and by passenger automobiles.

Said business further is part of "package deal" arrangements with said various inter-state and international airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Trans-World Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular & Occidental Steamship Company, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coast Line Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus [fol. 110] line companies including Greyhound Bus Line Company, Trailways Bus System and various other inter-state bus line companies. Said "package deal" arrangements are arrangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by plaintiffs and said inter-state carriers. All expenses incurred in promoting, making and consummating said inter-state and international sales are jointly shared by plaintiffs and said inter-state and international carriers. The proceeds of said inter-state and international sales

are divided between plaintiffs as operator of said hotel and said interstate and international carriers.

Said plaintiffs, as a part of the operation of said hotel, purchase numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said plaintiffs as a part of the operation of said hotel sell directly outside of the State of Florida and within the State of Florida for carriage or resale outside of the State of Florida.

Said plaintiffs as part of the operation of said hotel advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the states of the United States outside of the State of Florida and in various countries outside of the United States.

Plaintiffs as part of the operation of said hotel have on said premises various shops and services engaged in inter-state commerce including Western Union Telegraph services, numerous travel agencies, transportation offices for airlines, steamship lines, railroad companies and bus lines, inter-state stock exchange branches, inter-state chain drug stores, inter-state clothing stores and other inter-state retail stores.

Defendants further state that said hotel is part of a multi-state chain, said entire chain being engaged in inter-state commerce, so that labor disputes at plaintiffs' hotel affects inter-state commerce.

Defendants further state that the Congress of the United States has by legislative enactment under the Constitution of the United States, occupied the fields as to all matters complained of in the petition of plaintiffs and this State [fol. 111] Court has no jurisdiction to act in the premises wherefore the said cause should be dismissed for lack of jurisdiction.

Gramling & Gramling, J. W. Brown, Ben Gettler, By Carrington Gramling, 224 Shoreland Building, Miami, Florida, Solicitors for Defendants.

Certificate of service (omitted in printing).

[fol. 112]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-C

[Title omitted]

MOTION TO STRIKE—Filed August 5, 1955

Come now the Plaintiffs in the above styled cause by their undersigned attorneys, Sibley & Davis and Patton & Kanner, and move to strike the Supplemental Answer filed by the Defendants, and for grounds of said motion say:

1. That the matters therein alleged are immaterial.

2. That the matters therein alleged are insufficient to state any defense.

Sibley & Davis, Patton & Kanner, By Samuel J. Kanner, Attorneys for Plaintiffs.

Certificate of service (omitted in printing).

[fol. 113]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-C

[Title omitted]

MOTION TO DISMISS—Filed August 5, 1955

Come now the Plaintiffs in the above styled cause by their undersigned attorneys, Sibley & Davis and Patton & Kanner, and move to dismiss the Defendants' request for affirmative relief, and for grounds of said motion say:

1. That said request fails to state a claim or defense upon which relief can be granted.

Sibley & Davis, Patton & Kanner, By Samuel J. Kanner, Attorneys for Plaintiffs.

Certificate of service (omitted in printing).

[fol. 114]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,588-I

MORRIS LANSBURGH and DANIEL LIFTER, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255, (A. F. of L.) et al., Defendants.

STIPULATION IN RE FINAL HEARING—Filed January 9, 1956

It Is Stipulated by and between counsel for the respective parties that for the purposes of Final Hearing each would produce as witnesses the several affiants who have heretofore made Affidavits in this cause and that the respective witnesses would testify according to their respective affidavits; that cross examination is waived and it is

Stipulated that Final Decree be entered by the Chancellor upon the record as now made in the light of this Stipulation.

Witness our hands at Miami, Dade County, Florida this 5th day of January, 1956.

Sibley & Davis and Patton & Kanner, Attorneys for Plaintiff, By /s/ Stuart W. Patten.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By Carrington Gramling.

[fol. 115]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-D

MORRIS LANSBURGH and DANIEL LIFTER, Plaintiffs,

v.

HOTEL EMPLOYEES UNION, LOCAL No. 255, of the American Federation of Labor, et al., Defendants.

FINAL DECREE—Dated December 6, 1955,
Filed January 9, 1956

This Cause coming on to be heard upon final hearing pursuant to the Stipulation of the parties to this cause, and the Court being fully advised in the premises,

It Is Thereupon Ordered, Adjudged and Decreed that the restraining order heretofore rendered against the defendants, and each of them, which order is recorded in Chancery Order Book 1189, at Page 522, in the records of the Clerk of the Circuit Court of Dade County, Florida, be and the same is hereby made permanent. The injunction bond filed herein is hereby cancelled and the principal and surety released of all liability thereunder. The costs of this cause hereby assessed in the sum of 52 50/100 are taxed against the defendants, for which let execution issue.

Done and Ordered in Chambers, Miami, Florida, this 6th day of December, 1955.

Charles A. Carroll, Circuit Judge.

[fol. 116]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,412-C

[Title omitted]

NOTICE OF APPEAL—Filed January 25, 1956

The defendants, Hotel Employees Union, Local No. 255, et al., take and enter their appeal to the Supreme Court of Florida to review the order, judgment or decree of the Circuit Court for Dade County, bearing date the 9th day of January, 1956, entered in the above styled cause and recorded in the records of said Court in Book 1219, Page 389, and all parties to said cause are called upon to take notice of the entry of this appeal.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By Carrington Gramling.

[fol. 117]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY No. 180,412 C

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 25, 1956

Come now the defendants by their undersigned solicitors and make the following assignments of error as the errors which they intend to rely upon in the Supreme Court of Florida, for a reversal of the Order (or Final Decree) made herein on the 9th day of January, 1956, and recorded in Chancery Order Book 1219, page 389 of the records of this Court, from which they have appealed:

1. The Court erred in enjoining the defendants in peaceful picketing the business place of the complainants, whereby your defendant Union and its individual members became disenfranchised from the exercise of their constitu-

tional guarantees of freedom of speech, lawful assembly, and the right to work or refrain from working as guaranteed within the meaning and scope of Sections I, XII, XIII, XVII, and XIX, Declaration of Rights, Constitution of the State of Florida, and Amendments I, V, XIII and XIV of the Constitution of the United States of America.

2. The Court erred (in and by such final decree) in finding that the defendants should have established to the satisfaction of the employer, that the employees had chosen defendant Union as their representative and further requiring that the labor organization must also inform the employer of the object to be accomplished by picketing and [fol. 118] afford an unwilling or hostile employer an unspecified waiting period within which to engage in negotiations, all as a prerequisite to the right to strike and picket, whereby your defendants and the Union members became disenfranchised from the exercise of their constitutional guarantee of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments I, V, XIII and XIV of the Constitution of the United States of America.

3. The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

5. The Court erred (in and by such final decree) in enjoining peaceful picketing and the dissemination of information predicated upon an unsubstantiated finding of fact, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

6. The Court erred in requiring a direct employer-employee relationship as a prerequisite to picketing and as a prerequisite to publicizing the existence of a labor dispute, contrary to Amendments I and XIV of the Constitution of the United States of America.

[fol. 119] 7. The Court erred (in and by such final decree) in permanently enjoining peaceful picketing and the publicizing of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefor, and beyond the scope of any finding of fact, unsubstantiated or otherwise, thereby depriving the members of this Union the guarantee of Amendments I and XIV of the Constitution of the United States.

8. The Court erred (in and by such Final Decree) in ignoring the undisputed evidence that Defendants had offered to prove representation of plaintiffs' employees and submitted to plaintiffs, prior to the picketing, the sworn statement of a certified public accountant as to such representation, together with a statement of the objectives to be accomplished by collective bargaining and in ignoring the co-relative (sic) duty upon the plaintiffs to accept such proof or at least to make reasonable inquiry as to the accuracy of the aforesaid certificate by the certified public accountant, and thereupon entering the aforesaid injunction, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

9. The Court erred (in and by said final decree) in assessing costs against the defendants.

J. W. Brown, Gramling & Gramling, Attorneys for Defendants, By Carrington Gramling.

[fol. 120]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180412-D

[Title omitted]

STIPULATION RE RECORD—Filed March 2, 1956

It Is Stipulated by and between solicitors for the respective parties that the Record on Appeal in the above entitled cause shall consist of the following:

Date of Filing	*Kind of Instrument*
June 9, 1955	Bill of Complaint
June 14, 1955	Affidavits
June 16, 1955	Answer of Defendants
June 16, 1955	Letters, Affidavits and Exhibits on behalf of Defendants.
June 17, 1955	Preliminary Injunction recorded in Chancery Order Book 1189, page 522
June 28, 1955	Supplemental Answer
January 9, 1956	Stipulation Re Final Hearing
January 9, 1956	Final Decree recorded in Chancery Order Book 1219 page 389
January 25, 1956	Notice of Appeal
[fol. 121]	
January 25, 1956	Assignments of error
1956	This Stipulation

Witness our hands at Miami, Dade County, Florida this 2nd day of March, 1956.

Sibley & Davis, Patton & Kanner, Attorneys for Plaintiffs, By William H. Manam, Jr.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, Carrington Gramling.

[fol. 122] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 124]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957 DIVISION B.

Case No. 28,238

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

MORRIS LANSBURGH and DANIEL LIFTER, Appellees.

An Appeal from the Circuit Court for Dade County, Charles A. Carroll, Judge.

J. W. Brown and Gramling & Gramling, for Appellants.

Sibley & Davis, Thomas H. Barkdull, Jr., and Patton & Kanner, for Appellees.

OPINION, PER CURIAM—Filed March 15, 1957

Affirmed on authority of Fontainebleau Hotel Corp. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., opinion filed February 1, 1957.

TERRELL, C.J., HOBSON, DREW and O'CONNELL, JJ., Concur.

[fol. 126]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957 DIVISION B.

Case No. 28,238

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

MORRIS LANSBURGH and DANIEL LIFTER, Appellees.

JUDGMENT—March 15, 1957

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree here-

in, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellees do have and recover of and from the Appellants their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

[fol. 128]

IN THE SUPREME COURT OF FLORIDA

Book 1285 Page 78

MANDATE FROM SUPREME COURT OF FLORIDA—April 1, 1957

To the Honorable, the Judges of the Circuit Court for the Eleventh Judicial Circuit of Florida. Greeting:

Whereas, Lately in the Circuit Court of The Eleventh Judicial Circuit, In And for the County of Dade in a cause wherein

---

Morris Lansburgh and Daniel Lifter, were plaintiffs

and

Hotel Employees Union, Local No. 255 (A. F. of L.) et al, were defendants

---

Circuit Court #180412)

the Decree of said Circuit Court was rendered Dec. 5, 1956 as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal

agreeably to the laws of said State in such case made and provided, fully and at large appears:

And Whereas, at the January Term of said Supreme Court holden at Tallahassee, A. D. 1957, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 15th day March A. D. 1957 the said Supreme Court rendered its opinion and judgment in said cause as per copy thereof hereto attached and made a part hereof.

In Consideration Whereof, It Is Ordered by the Court that the Appellees do have and recover of and from the Appellants costs in this behalf expended herein taxed except the $12.00 filing fee which has been paid by the Appellants, and that all other costs shall be taxed in the court in which the appeal was entered, therefore,

You Are Hereby Commanded, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Decree of the Circuit Court notwithstanding.

Witness, The Honorable Glenn Terrell, Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 1st day of April 1957.

Gwyte P. McCord,
Clerk Supreme Court of Florida.

(Seal)

Filed this 2 day of Apr A. D. 1957
Recorded this 4 day of Apr A. D. 1957
in Chancery Order Book 1285 on
Page 78

E. B. Leatherman,
Clerk Circuit Court
By (Signature Illegible)

[fol. 134]

IN SUPREME COURT OF FLORIDA

HOTEL EMPLOYEES UNION, LOCAL NO. 255, A. F. of L., et al., Appellants,

v.

SORRENTO HOTEL, INC. and TWENTY-ONE OTHERS, Appellees.

Appeal from the Circuit Court of the Eleventh Judicial Circuit of Florida, In and for Dade County.

BRIEF FOR APPELLEES—Filed August 23, 1956

(Morris Lansburgh, et al.; R. S. Levy, et al.; and International Company, Inc., et al.)

(Appendix to ~~this~~ Brief Filed as a Separate Instrument)

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IN SUPREME COURT OF FLORIDA

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellees,

v.

SORRENTO HOTEL, INC. and TWENTY-ONE OTHERS, Appellees.

Appeal From the Circuit Court of the Eleventh Judicial Circuit of Florida, In and for Dade County.

BRIEF FOR APPELLEES,

(Morris Lansburgh, et al.; R. S. Levy, et al.; and International Company, Inc., et al.)

The Brief of the Appellants consolidates twenty-two cases wherein appeals are now pending from final decrees entered by the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida. This Brief is submitted on behalf of three of the Appellees, the plaintiffs below in three separate suits: (1) International Company, Inc., a Florida corporation; Stanley Ogrodowski, Louis Galley, Manuel Hammet, Birnie B. Greer, Margaret [fol. 139] Brettman and Gertrude Conroy v. Hotel Employees Union, Local No. 255, et al. (Empress Hotel); (2) Morris Lansburgh and Daniel Lifter v. Hotel Employees Union, Local No. 255, et al. (Robert Richter Hotel); and (3) R. S. Levy, Daniel Lifter and J. J. Lansburgh as Trustee for the Ellen Lansburgh Trust, the Morris Lansburgh, Jr. Trust and the Leonard Lansburgh Trust v. Hotel Employees Union, Local No. 255, et al. (Versailles Hotel).

Statement of the Case

The Brief of the Appellants contains a combined statement of the facts of the twenty-two cases on appeal. The

cases involving these three appellees present different facts and issues and for the sake of clarity, the history of each of the three cases will be stated separately.

(1) International Company, Inc., a Florida corporation, et al. v. Hotel Employees Union, Local No. 255, et al.

On May 10, 1955, International Company, Inc., a Florida corporation, the owner and operator of the Empress Hotel at Miami Beach, Florida, and Stanley Ogrodowski, Louis Gulley, Manuel Hammet, Birnie B. Greer, Margaret Brettman and Gertrude Conroy, as individual plaintiffs and also as a committee representing a majority of the employees of International Company, Inc., filed their sworn complaint for injunctive and other relief. This complaint alleged that there existed no labor dispute and that there had been no employee complaints concerning wages, hours or other working conditions. The complaint further alleged that [fol. 140] without presenting to the hotel management any evidence that the defendant Union represented any employees and without informing the hotel management of the matters upon which the Union sought to negotiate, the defendant, David Herman, telephoned the owners of the hotel and stated: "Either sign our contract with the union or I will call a strike." The complaint alleged that at 7:30 P. M. on May 2, 1955, the defendants attempted to cause a strike at the hotel premises, stationing organizers throughout the premises to urge the employees to leave the hotel and causing pickets to parade in front of the Empress Hotel premises, carrying placards or signs, stating: "This hotel refuses to negotiate with Hotel Employees Union, Local No. 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach." The complaint alleged that the union had intimidated the employees in numerous ways and set forth a series of acts of violence and coercion.

The application of the plaintiffs for a temporary injunction was heard by the Court upon the sworn bill of complaint and affidavits filed by the plaintiffs in support of their application, and counter-affidavits filed by the defendants. On May 20, 1955, a temporary injunction was granted, the Court basing the injunction upon two grounds,

first, a finding that there existed violence in connection with the strike and picketing, and, *second*, a finding that the strike and picketing were illegal. (Appendix 1-8).

On May 27, 1955, the defendants filed their answer to the plaintiffs' complaint for injunctive and other relief. The [fol. 141] answer, in substance, denied the material allegations of the complaint. The answer further alleged that the defendant Union did represent a majority of the employees of the plaintiff corporation and that the defendant Union could exhibit designation cards, signed by the plaintiffs' employees. However, the answer failed to allege that this proof of representation was ever presented to the plaintiffs. The answer further alleged that any action on the part of the defendant Union did not constitute a "strike" within the meaning of Florida Statute 447.09(3) and (4), but that the Union was only engaged in picketing which action did not require the majority vote of any employees under the laws of Florida.

On June 28, 1955, the defendants filed a supplemental answer which answer, in substance, alleged that the plaintiffs were engaged in interstate commerce and that by legislative enactment under the Constitution of the United States, the Congress of the United States had occupied the fields as to all matters complained of in the bill of complaint and that the State Court was without jurisdiction to act in the premises.

On August 11, 1955, the plaintiffs filed a motion to strike the supplemental answer, stating that the matters alleged therein were immaterial and insufficient to state any defense, and on August 11, 1955, the plaintiffs filed a motion to dismiss that portion of the defendants' answer wherein the defendants sought affirmative relief. On January 10, 1956, the plaintiffs and the defendants entered into a stipulation as to the presentation of proof for the purposes of a final hearing on the cause, and on January 10, 1956, the Chancellor entered his final decree. (Appendix 910). Said [fol. 142] final decree stated that the findings of fact and law, and the preliminary injunction entered against the defendants, and each of them, be and the same were ratified, confirmed and made permanent. (Appendix 11-12).

(2) Morris Lansburgh and Daniel Lifter v. Hotel Employees Union, Local No. 255, et al.

On June 9, 1955, the plaintiffs, Morris Lansburgh and Daniel Lifter, the owners and operators of the Robert Richter Hotel, filed their complaint for injunctive and other relief. The complaint alleged that the Robert Richter Hotel employed seventy-six employees in other than management positions and that there existed no labor dispute nor had management received any complaints from employees concerning wages, hours or other conditions of employment. The complaint alleged that the defendant Union did not represent the employees of the hotel but that the defendant, David Herman, on June 2, 1955, addressed a communication to the plaintiffs, requesting recognition of the defendant Union as the collective bargaining agent and professing to represent the employees of the plaintiffs. The communication failed to reveal any of the individual employees whom the defendants professed to represent. The complaint alleged that on June 2, 1955, the defendants caused pickets to be placed in front of the Robert Richter Hotel, carrying signs, stating: "This hotel refuses to negotiate with Hotel Employees Union, Local No. 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach." The complaint further alleged that the defendants had entered upon a course of conduct whereby a series of illegal pickets were placed upon the premises of various [fol. 143] hotels in Miami Beach and that the defendants were advertising falsely the existence of labor disputes in the Miami Beach hotels.

On June 16, 1955, the defendants filed their answer which denied the allegations of the plaintiffs' complaint for injunctive and other relief. The answer further alleged that the defendants represented an overwhelming majority of the plaintiffs' employees and stated that proof of such representation was furnished to the plaintiffs prior to the establishment of the picket line. The answer, however, admits that this proof of representation consisted only of (a) the statement by the defendant, David Herman, in a letter of June 2nd that the Union represented the employees, plus (2) a certification by an alleged certified public accountant that his examination of the Union's records in-

dicated that the defendant Union represented forty of the plaintiffs' employees.

Upon the plaintiffs' application for temporary injunction, a hearing was had before the Court on the sworn bill of complaint and affidavits filed by the plaintiffs in support of their application and sworn answer of the defendants and counter-affidavits filed by the defendants in opposition to the application, and the Court, on June 17, 1955, entered its preliminary injunction. (Appendix 13-15).

On June 28, 1955, the defendants filed a supplemental answer, alleging that by legislative enactment under the Constitution of the United States, Congress of the United States had occupied the field as to all matters complained of and that the State Court was without jurisdiction. On August 11, 1955, the plaintiffs filed their motion to strike [fol. 144] this supplemental answer and on August 11, 1955, the plaintiffs filed a motion to dismiss that portion of the answer wherein the defendants sought affirmative relief.

On January 9, 1956, the parties entered into a stipulation with regard to the proof to be considered by the Court upon application for final decree. (Appendix 16). On January 9, 1956, the Court entered its final decree, making permanent the preliminary injunction heretofore entered. (Appendix 17).

(3) R. S. Levy, et al. v. Hotel Employees Union, Local No. 255, et al.

On June 15, 1955, plaintiffs filed their complaint for injunctive and other relief against the defendants, alleging that the defendants had established a picket line in front of the hotel leased and operated by the plaintiffs and that the actions of the defendants were in violation of the laws of Florida and the Constitution of the State of Florida, and that the defendants were attempting by their actions to be designated the collective bargaining agent for the employees they did not represent, to deny to the plaintiffs' employees the right to work because they were not members of the defendants' union, to establish a picket line for an illegal purpose, in that the same was predicated upon the alleged refusal of the plaintiffs to negotiate with the

defendants, the defendant Union having offered no trustworthy proof that it represented any employee of the plaintiffs, and having afforded the plaintiffs no fair opportunity to engage in any negotiations, and to publicize falsely the non-existing labor dispute.

[fol. 145] On July 6, 1955, the defendants filed their answer to the plaintiffs' complaint which, in substance, denied that any of the actions of the defendants were illegal and prayed that the Court appoint a Commissioner to hold an election among the plaintiffs' employees to ascertain the question of representation.

On July 28, 1955, the defendants filed a supplemental answer, attempting to establish that the plaintiffs were engaged in interstate commerce and challenging the jurisdiction of the Court.

On August 4, 1955, the plaintiffs filed a motion to dismiss that portion of the defendants' answer seeking affirmative relief, and, on August 4, 1955, the plaintiffs filed a motion to strike the supplemental answer of the defendants.

On September 13, 1955, an order was entered by the Circuit Judge, setting the hearing upon the plaintiffs' application for temporary injunction and ordering that evidence should be submitted in the form of affidavits rather than by the presentation of witnesses. The plaintiffs filed affidavits in support of their application for temporary injunction and the defendants filed no counter-affidavits, relying solely upon the affidavit of the defendant, David Herman, which was attached to and made a part of their answer. On September 16, 1955, hearing on the plaintiffs' application for temporary injunction was held and on September 22, 1955, the Circuit Judge, Robert L. Floyd, entered an order denying temporary injunction. On September 22, 1955, the plaintiffs filed their petition for the issuance of a writ of certiorari from this Court, and on December 14, 1955, this Court ordered that a Writ of [fol. 146] Certiorari be awarded and that the order denying plaintiffs' petition for temporary injunction be reversed, with directions to enter the injunctive order prayed for on the authority of *Boca Raton Club, et al.* v. *Hotel Employees Union, Local No. 255*, (1955) 83 So. 2d 11. (Appendix 18-19).

On December 19, 1955, pursuant to the mandate of this Court, the Circuit Court entered its preliminary injunction, enjoining picketing at the plaintiffs' premises. On January 9, 1956, the parties entered into a stipulation with regard to the proof to be submitted at final hearing, and on January 9, 1956, a final decree was entered, granting the injunction sought by the bill of complaint. (Appendix 20-21).

Points Involved on Appeal

Point I

The "Law of the Case" Established by This Court's Prior Adjudication Upon This Identical Record Demands Affirmance in the Case of the Versailles Hotel.

Point II

The Requirement That a Union Must Establish That Employees Have Chosen It as Their Representative, and [fol. 147] Must Inform the Employer of the Object to Be Accomplished by the Picketing and Afford to the Employer a Fair Opportunity to Engage in Negotiations Does Not Violate Any Provision of the Constitution of the United States Where the Picketing Is for the Purpose of Forcing the Employer to Negotiate a Contract With the Union.

Point III

Prior to the Strike and Picketing, the Union Failed to Submit to the Employers Any Trustworthy Proof That the Employees Had Chosen It as Their Representative and Failed to Afford the Employer Any Opportunity to Engage in Negotiations.

Point IV

The Court Did Not Violate the Guarantees of Amendments I and XIV of the Constitution of the United States of America by Enjoining Picketing Which Was Accom- [fol. 148] panied by Threats, Force, Violence, Coercion and Intimidation.

Point V

The Sovereign State of Florida by Delegating to the Congress of the United States the Power to Control Interstate Commerce Was Not Divested of Its Inherent Police Power to Prevent Acts of Violence or Peaceful Acts Directed to a Purpose Contrary to the Public Policy of the State.

Argument

Point I

The "Law of the Case" Established by This Court's Prior Adjudication Upon This Identical Record Demands Affirmance in the Case of the Versailles Hotel.

By taking an appeal from the final decrees entered in the cases involving the Versailles Hotel, the Robert Richter Hotel and the Empress Hotel, the Appellants have presented to this Court a remarkably easy task. This is manifestly true for two reasons. *First,* the doctrine of "the law of the case" demands a judgment of affirmance in the [fol. 149] case involving the Versailles Hotel. This Court has already established "the law of the case" in this litigation by its prior adjudication upon this identical record. *Second,* the doctrine of "stare decisis" demands the affirmance of the final decrees in the cases involving the Empress Hotel and the Robert Richter Hotel. The law concerning the issues involved in these appeals has already been firmly established and clearly enunciated by the recorded opinions of this Court. *Sax Enterprises, Inc.* v. *Hotel Employees Union, Local No. 255, et al.* (Fla. 1955) 80 S. 2d 602, and *Boca Raton Club* v. *Hotel Employees Union, Local No. 255,* above. This Court has already decided the case involving the Versailles Hotel upon the authority of the two above-cited cases. An examination of the records in the cases involving the Robert Richter and the Empress hotels will reveal all of the factors which prompted this Court's decision in the cases involving the Versailles Hotel, and it will be discovered that there are additional grounds which will support the Chancellors' final decrees in the cases of the Empress Hotel and the Robert Richter hotel.

On September 16, 1955, a hearing was held upon the application of the Versailles Hotel for a temporary injunction. The evidence was submitted to the Chancellor in the form of affidavits filed by the hotel management and a counter-affidavit of the defendant, David Herman, which was attached to the answer filed in the cause. The court below entered its order of September 22, 1955, denying to the Versailles Hotel its prayer for a temporary injunction against picketing the hotel premises and found that the defendant Union had established that the employees had [fol. 150] chosen the union as their representative. Upon application, this Court granted a Writ of Certiorari to review this order of the trial court and such order was reversed by this Court, with directions to enter the injunction order on authority of *Boca Raton Club, Inc.* v. *Hotel Employees Union, Local No. 255, et al.*, above.

The parties entered into a stipulation, setting forth the exact evidence that would be considered by the Chancellor in entering a final decree in this cause:

> "It Is Stipulated by and between counsel for the respective parties that for the purposes of final hearing each would produce as witnesses the several affiants who have heretofore made Affidavits in this cause and that the respective witnesses would testify according to their respective affidavits; that cross examination is waived and it is
>
> "Stipulated that final decree be entered by the Chancellor upon the record as now made in the light of this Stipulation.
>
> "Witness our hands at Miami, Dade County, Florida, this 5th day of January, 1956."

The record before this Court today is precisely the same as that upon which this Court has already rendered its decision, and the effect of this appeal is to require this Court to decide the same issue twice.

The Appellants' appeal is therefore nothing more than an untimely "petition for a rehearing" and should be denied and the final decree of the court below affirmed. *Ferguson* v. *Brogan*, (1933) 111 Fla. 224, 149 So. 772; *Harvey Corp.*

v. *Universal Equipment Co.*, (1947) 158 Fla. 644, 29 S. 2d 700.

[fol. 151] Opposing briefs normally present conflicting views as to the law of the jurisdiction. From a search of the Appellants' brief, it is impossible to discern wherein the Appellants disagree with the Appellees concerning the well-established and clearly-defined law of this State as set forth in the cases of *Sax Enterprises, Inc.* v. *Hotel Employees Union, Local No. 255, et al.*, above, and *Boca Raton Club, Inc.* v. *Hotel Employees Union, Local No. 255, et al.*, above. At this point a discussion of the law of the State of Florida concerning the issues involved in these appeals is necessary only for the purpose of (1) indicating that the final decrees in the Robert Richter and Empress hotel cases should be affirmed because the records in these cases fall squarely within the above holdings of this Court, and (2) to indicate that the law of the State of Florida, as found in the Constitution of the State of Florida, the acts of the Legislature and the decisions of this Court, is not only firmly established and clearly enunciated but that the same is eminently sound and does not offend any provision of the Constitution of the United States of America, being buttressed by an impressive series of decisions rendered by the Supreme Court of the United States.

All of the Appellants' assignments of error deal with provisions of the Constitution of the State of Florida and the Constitution of the United States. There exists no court which has the power to challenge this Court with regard to its decisions concerning the Constitution of the State of Florida. As to this issue, this is the highest tribunal. We can, therefore, disregard the Appellants' cries that any action taken in these cases offends the Con-[fol. 152] stitution of the State of Florida. The highest Court has spoken.

Point II

The Requirement That a Union Must Establish That Employees Have Chosen It as Their Representative, and Must Inform the Employer of the Object to Be Accomplished by the Picketing and Afford to the Employer a Fair Opportunity to Engage in Negotiations Does Not

Violate Any Provision of the Constitution of the United States Where the Picketing Is for the Purpose of Forcing the Employer to Negotiate a Contract With the Union.

The Constitution of the State of Florida in the Declaration of Rights, Section 12, provides:

> "Sec. 12. Double jeopardy; self-incrimination; eminent domain; right to work.
>
> "No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation. The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union, or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer."

Florida Statutes, Section 447.03, provides:

> "Employees' Right of Self-Organization.
>
> "Employees shall have the right to self-organization [fol. 153] to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."

The Appellants, in their Brief, do not contend that Section 12 of the Declaration of Rights, Florida Constitution, and Florida Statute, Section 447.03, violate Amendments I and XIV of the Constitution of the United States of America. In the case of *Plumbers and Steamfitters of the United States and Canada of the American Federation of Labor* v. *Graham*, (1953) 345 U. S. 192, 97 L. Ed. 946, the Supreme Court of the United States held that the right to work statute of the State of Virginia did not violate the Constitution of the United States of America and that peaceful

picketing, which was for the purpose in conflict with such right to work statute, could be constitutionally enjoined. In the opinion of the Court, Justice Burton stated:

> "The basic question here is whether the Commonwealth of Virginia, consistently with the Constitution of the United States, may enjoin peaceful picketing when it is carried on for purposes in conflict with the Virginia Right to Work Statute. A question also before us is whether the record in this case justifies the finding, made below, that the picketing was for such purposes. We answer each in the affirmative . . . "

On Page 28 of the Appellants' Brief, the Appellants cite various cases decided by the United States Supreme Court to establish the proposition that picketing is form of speech and as such is afforded constitutional protection.
[fol. 154] Although picketing is a form of speech, it has been clearly established that picketing, even though peaceful, may be enjoined by a state when it is for an illegal purpose. In the case of *Joseph Giboney, et al.* v. *Empire Storage and Ice Company*, (1949) 336 U. S. 490, 93 L. Ed. 834, an ice peddlers' union sought to break down the resistance of non-member peddlers to efforts to get them to join the union by inducing wholesale distributors to agree not to sell ice to non-union peddlers. Such an agreement was illegal under a *state statute* declaring combinations in restraint of trade to be unlawful. The United States Supreme Court unanimously held that the state statute was constitutionally applicable to labor unions and that the right of free speech does not extend to an exercise in the furtherance of an illegal end.

In the case of *Building Service Employers International Union, Local 262, et al.* v. *W. L. Gazzam* (1950) 339 U. S. 532, 94 L. Ed. 1045, the state court enjoined a labor union from picketing an employer's place of business for the purpose of compelling him to coerce his employees against their expressed desire not to do so, to join the picketing union or to designate it as their bargaining representative. The United States Supreme Court affirmed this action of the state court and the decision was rested on the ground that the picketing was for the purpose of forcing an em-

ployer to violate the law and public policy of the state and that it was not for the Supreme Court of the United States to judge the wisdom of such a policy. In the opinion, Justice Minton stated:

[fol. 155] "Here, as in Giboney, the union was using its economic power with that of its allies to compel respondent to abide by union policy rather than by the declared policy of the state. That state policy guarantees workers free choice of representatives for bargaining purposes. *If respondent had complied with petitioners' demands and had signed one of the tendered contracts and lived up to its terms, he would have thereby coerced his employees. The employees would have had no free choice as to whether they wished to organize or what union would be their representative . . .*" (Emphasis supplied).

These decisions by the United States Supreme Court establish the proposition that the right to work constitutional provision and statute, such as those of the State of Florida, are constitutional and that a finding that peaceful picketing is done for a purpose in conflict with such statutes can be enjoined. In the case of *Plumbers and Steamfitters* v. *Graham*, above, Justice Burton states in the opinion:

"However innocent the picketing appeared while in progress, the Virginia courts found that it was combined with conduct and circumstances occurring before and during the picketing that demonstrated a purpose on the part of the petitioners that was in conflict with the Right to Work Statute . . .

". . . The policy of Virginia which is expressed in its Right to Work Statute is summarized as follows by its highest court:

'It provides in substance that neither membership [fol. 156] nor non-membership in a labor union shall be made a condition of employment; that a contract limiting employment to union members is against public policy; and that a person denied employment because he is either a member of a union or not a member of a union shall have a right of action for

damages.' Finney v. Hawkins, 189 Va. 878, 880, 54 SE 2d 872, 874.

"Based upon the findings of the trial court, we have a case in which picketing was undertaken and carried on with at least one of its substantial purposes in conflict with the declared policy of Virginia. The immediate results of the picketing demonstrated its potential effectiveness, unless enjoined, as a practical means of putting pressure on the general contractor to eliminate from further participation all nonunion men or all subcontractors employing nonunion men on the project.

"Assuming the above conclusions to have been established, petitioners still contend that the injunction in this case was inconsistent with the Fourteenth Amendment to the Constitution of the United States. On the reasoning and authority of our recent decisions, we reaffirm our position to the contrary . . . "

In the case of *Plumbers and Steamfitters* v. *Graham*, above, the Court was faced with a determination as to whether or not the record in the Court below established that the picketing was for a purpose in conflict with the Right to Work Statute of Virginia. In considering the three cases treated in this Brief, a determination of the [fol. 157] purpose of the picket lines is easy. In each of the three cases, the defendant Union placed a picket line in front of the hotel premises. The pickets parading before the hotels carried placards, each of which read: "This hotel refuses to negotiate with Hotel Employees Union, Local No. 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach."

The purpose of the picket line was thus announced. It was for the purpose of forcing the hotel owners to negotiate a contract with a certain labor union.

This Court, in the case of *Sax Enterprises, Inc.* v. *Hotel Employees Union, Local No. 255*, above, clearly stated the rule for determining a picket line's illegality where the purpose of the picket line is to force an employer to negotiate a contract with a certain union. In the opinion, Justice Hobson said:

"Without doubt a labor organization has the right to engage in peaceful picketing of an employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union as the representative of such employer's employees. In order for such picketing to be lawful (1) *the union must establish that the employees have chosen it as their representative (Treasure, Inc.* v. *Hotel & Restaurant Employees and Bartenders' Union, supra), and (2) the labor organization must also inform the employer of the object to be accomplished by the picketing and (3) afford to the employer a fair opportunity to engage in negotiations.* See North East Texas Lines, Inc. v. Dickson, et al. (Texas) 219 S. W. 2d 795." (Emphasis and numbering supplied).

Florida Statutes Annotated, 447.03, above, guarantees [fol. 158] that employees shall have the right to self-organization, to bargain collectively through representatives of their own choosing, and *Florida Statutes, Annotated, 447.09,* provides that it shall be unlawful for any person to coerce or intimidate an employee from enjoying his legal rights, including those guaranteed in Section 447.03. It would have been unlawful for the plaintiffs in any of these cases to have negotiated a contract with the union without some satisfactory and trustworthy proof that the plaintiffs' employees had designated the union to negotiate a contract for them. Justice Hobson recognized this dilemma in which the employer found himself. In the case of *Giboney, et al.* v. *Empire Storage and Ice Company,* above, Justice Black recognized a similar dilemma where the purpose of a picket line was to force an employer to violate a statute of the State of Missouri. In the opinion, Justice Black said:

"In this dilemma, Empire was faced with three alternatives: It could continue to sell ice to nonunion peddlers, in which event it would be compelled to wage a fight for survival against overwhelming odds; it could stop selling ice to nonunion peddlers thereby relieving itself from further conflict with the union, in which event it would be subject to prosecution for crime and suits

for triple damages; it could invoke the protection of the law. The last alternative was adopted . . . "

The Appellees in these cases were faced with a similar problem. They could have continued to operate their hotels in the face of the great economic pressure that was being placed upon them and at overwhelming odds; they could [fol. 159] have blindly entered into a contract with the union without demanding any proof that the union represented any one of their employees and thereby deprived the employees of their right to *self*-organization through representation of their *own* choosing; or they could have invoked the protection of the law. The last alternative was adopted.

The public policy of the State of Florida, as set forth in the Constitution of the State of Florida and the enactments of the Legislature, demands that employees shall be protected in their right to *self*-organization through representatives of their *own* choosing. The Constitution of the United States of America does not prevent the State of Florida, in the exercise of its police power, from enjoining picketing which is designed to accomplish a purpose in conflict with this public policy.

Point III

Prior to the Strike and Picketing, the Union Failed to Submit to the Employers Any Trustworthy Proof That the Employees Had Chosen It as Their Representative and Failed to Afford the Employer Any Opportunity to Engage in Negotiations.

Under Point I in the Appellants' brief, the Appellants challenge the constitutional validity of the established law of this State concerning the prerequisites to lawful picketing when the picketing is for the announced purpose of forcing an employer to enter into a contract with the picketing union, alleging that the guarantees of Amendments I and XIV of the Constitution of the United States [fol. 160] of America are thereby abridged. Under Point IV of the Appellants' brief, the Appellants would attempt to convince this Court that they have met the prerequisites to lawful picketing within the jurisdiction.

In the case of International Company, Inc., a Florida corporation, et al. v. Hotel Employees Union, Local No. 255, et al. (Empress Hotel), the union did not even attempt to prove that it had offered any satisfactory and trustworthy proof that it represented any one of the plaintiffs' employees prior to the establishment of the picket line. The plaintiffs' sworn bill of complaint states that the defendant, David Herman, on May 1, 1955, called an officer of the plaintiff, International Company, Inc., and stated: "Either sign a contract with the union or I will call a strike." It was upon the refusal of the plaintiff to enter into a contract with the defendant union that the union called an illegal strike and established the picket line with placards stating: "This hotel refuses to negotiate with Hotel Employees' Union, Local No. 255."

In the case of Morris Lansburgh and Daniel Lifter v. Hotel Employees Union, Local No. 255, et al. (Robert Richter Hotel), and R. S. Levy, et al. v. Hotel Employees Union, Local No. 255, et al., (Versailles Hotel), the alleged attempts on the part of the defendant union to present to the plaintiff employer some evidence that it, in fact, represented one or more of the employer's employees, is more or less identical. These two cases arose after the pronouncement of this Court in the case of *Sax Enterprises*. [fol. 161] *Inc.* v. *Hotel Employees Union, et al.*, above. In each of these two cases, the purported attempt of the union to comply with the mandates of this decision, consisted of the following: (1) A communication addressed to the manager of the hotel contained the bare, unsupported assertion of the union organizer, David Herman, that the union represented the employees. We ask each member of this Honorable Court to ask himself if, sitting as a reasonable and prudent employer, he would feel justified in negotiating a contract with the union on the strength of this assertion. (2) A communication containing an instrument signed by one Paul J. Weiss, designating himself a certified public accountant and stating that he had examined the union's records and that a certain number of "your employees" are members of Local 255. The instrument did not reveal what records were examined, did not reveal the name of a single employee and did not contain any proof

that the records examined contained the names of the parties who were in fact employees of the plaintiffs. We ask each member of this Honorable Court to ask himself if, as a reasonable and prudent employer, he would feel justified in negotiating a contract with the union on the strength of this piece of paper.

In the case of Morris Lansburgh and Daniel Lifter, et al. v. Hotel Employees Union, Local No. 255, et al. (Robert Richter Hotel), the Chancellor made the following finding:

> "It affirmatively appears from the pleadings filed in this court, and the affidavits and counteraffidavits filed, that the plaintiffs did not refuse to negotiate with the defendants but that the defendants failed to provide the [fol. 162] plaintiffs with substantial or satisfactory proof or evidence that would establish to the plaintiffs that the defendants had been designated as the collective bargaining agent for the plaintiffs' employees. It further appears from the record in this cause that the defendants engaged in picketing for an illegal purpose, that of forcing the employees of the Robert Richter Hotel to designate the union or the individual defendants as their bargaining agent, and to coerce the owners of the hotel through economic sanction to sign a contract with the union and to use said contract as a basis to compel the employees of the plaintiff to become members of the defendant union."

In the case of R. S. Levy, et al. v. Hotel Employees Union, Local No. 255, et al. (Versailles Hotel), the Chancellor, upon similar purported representation, found that the union had established that the employees had chosen the union as their representative. This Court granted the plaintiffs' petition for certiorari and the order of the Chancellor denying to the plaintiffs a temporary injunction was reversed with the direction to enter the injunction prayed for on the authority of *Boca Raton Club, Inc.* v. *Hotel Employees Union, Local No. 255,* above.

This Court, in the case of *Boca Raton Club, Inc.* v. *Hotel Employees Union, Local No. 255,* above, and in the case of R. S. Levy, et al. v. Hotel Employees Union, Local No. 255, et al. (Versailles Hotel), has already held that the quantity

of purported evidence of representation presented in these two cases is not sufficient evidence to an employer of the designation as a representative and agent for bargaining purposes.

Justice Hobson, in the case of *Boca Raton Club, Inc.* v. [fol. 163] *Hotel Employees Union*, supra, states:

> ". . . Moreover, Sec. 447.03, F. S., F. S. A., grants unto *employees* the right to "*self*-organization" (Italics supplied) and "to bargain *collectively* through representatives of *their own choosing*." (Italics supplied). It seems clear that before being required to enter into negotiations with an alleged bargaining agent an employer should be shown by evidence of substantial character that his employees, or at least some of them, have voluntarily exercised the rights accorded them by our statute. Hence we deem it appropriate for the courts to fix reasonable and fair prerequisites to the end that, rather than economic strike, there may exist peaceful accord of labor disputes so necessary in the interest of the common weal . . . "

> ". . . Indeed, so far as this record show petitioners, except for the uncorroborated representations of a putative bargaining agent, never, prior to the most recent hearing in the circuit court, knew as a matter of fact that their employees were actually dissatisfied and had, because of such dissatisfaction, designated the respondent as their bargaining agent . . . "

In the case of the Versailles Hotel, the union not only failed to submit to the employers any trustworthy proof that the employees had chosen it as their representative and failed to afford to the employer a fair opportunity to engage in negotiation, but actually broke off negotiations by totally and completely ignoring a scheduled appointment with the agent authorized by the hotel to meet with the representatives of the union. A meeting held on May 20, 1955, was adjourned and a specific date to reconvene was set for May 23, 1955. The representative of the hotel [fol. 164] held himself available at his office throughout May 23, 1955, but no one on behalf of the union communi-

cated with him upon this date. (Appendix 22-23). In the case of *National Labor Relations Board* v. *Sands Manufacturing Co.*, (1938) 306 U. S. 332, 83 L. Ed. 682, the Supreme Court of the United States held that under the National Labor Relations Act, an employer could not be found guilty of an unfair labor practice for refusal to negotiate where negotiations were irrevocably broken off by the union.

In the case of the Empress Hotel, the picketing by the union was rightfully enjoined not only because the union wholly failed to meet the prerequisites to lawful picketing when instituted for the purpose of forcing the hotel to negotiate a contract with the union, but because of a finding by the Chancellor that the picketing was accompanied by acts of violence and was also for the purpose of implementing an unlawful strike since the same had not been authorized by a majority vote of the employees as required by F. S. A. 447.09(3). The Appellants in the answer filed in this case assert that F. S. A. 447.09(3) is not an issue in the case since there was no "strike" but only picketing. The Appellants now, however, seek to attack the constitutionality of this statute which in the Court below they asserted was not even an issue in the case. In addition to their other unlawful activities, the Appellants were engaged in a strike in violation of F. S. A. 447.09(3). They were not seeking to persuade employees to join their union by "inviting, inducing, signalling, or advertising" a strike. [fol. 165] *Moore* v. *City Dry Cleaners & Laundry, Inc.* (1949) Fla. , 41 S. 2d 865. Without any proof of representation, the Appellants asserted that they presently represented the employees and called a strike. An affirmance of the final decree in this case does not require this Court to pass upon the constitutionality of F. S. A. 447.09(3), since the activities of the Appellants were unlawful and properly enjoined for reasons other than their obvious violation of this statute.

Point IV

The Court Did Not Violate the Guarantees of Amendments I and XIV of the Constitution of the United States of America by Enjoining Picketing Which Was Accom-

panied by Threats, Force, Violence, Coercion and Intimidation.

The argument throughout the Appellants' entire brief is predicated upon the fundamental proposition that picketing is a form of speech. *Thronhill* v. *Alabama* (1940), 310 U. S. 100, 84 L. Ed. 1093, 60 S. Ct. 736. The Appellants apparently recognize the well-defined rule that picketing, accompanied by threats, force, violence, coercion or intimidation, is not afforded the constitutional protection of free speech. *Milkwagon Drivers' Union* v. *Meadowmoor Dairies*, (1941) 312 U. S. 287, 85 L. Ed. 836, 61 S. Ct. 552. In attacking those parts of the injunctions against picketing entered by the Chancellors below which enjoined the picketing because of violence, the Appellants are challenging the Chan- [fol. 166] cellors' findings of fact.

The Appellants quote from the opinion in *Milkwagon Drivers' Union* v. *Meadowmoor Dairies*, supra, which defines the generous scope that must be given to the guaranty of free speech. However, the Appellants ignore the language of Justice Frankfurter which warns of the danger of speech in a context of violence and which points to the wide latitude given the Chancellor in his finding of fact that such danger exists. In the opinion in *Milkwagon Drivers' Union* v. *Meadowmoor Dairies*, supra, Justice Frankfurter states:

> " . . . But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution . . .
>
> " . . . And acts which in isolation are peaceful may be part of a coercive thrust when entangled with acts of violence. The picketing in this case was set in a background of violence. In such a setting it could justifiably be concluded that the momentum of fear generated by past violence would survive even though future picketing might be wholly peaceful. So the supreme court of Illinois found. We cannot say that such a finding so contradicted experience as to warrant our rejection. Nor can we say that it was written into the Fourteenth Amendment that a state through its courts

cannot base protection against future coercion on an inference of the continuing threat of past misconduct . . . "

It is obvious, therefore, that we cannot set up a clear-cut rule which will identify the precise set of circumstances that will warrant a Chancellor in finding that the danger exists of which Justice Frankfurter speaks. This Court, in the case of *Moore* v. *City Dry Cleaners & Laundry*, supra, quoted at length from the Supreme Court's opinion in [fol. 167] *Milkwagon Drivers' Union* v. *Meadowmoor Dairies*, supra, in affirming the Chancellor below in his finding that a danger existed which warranted an injunction. Justice Sebring, in the opinion, stated:

" . . . picketing for an unlawful purpose or accompanied by threats, force, violence, coercion or intimidation, enjoys no such immunity . . .

" . . . Chancellor did not commit reversible error, therefore, in enjoining the defendants permanently from picketing the plaintiff's place of business, even though some of the acts of violence proven were not directly traceable to the representatives of the defendant and even though the activities of the union at the actual picket line were, on the whole, on the surface at least, of a peaceful and orderly nature . . . "

In the case involving the Empress Hotel, this Court is not faced with the problem of reviewing a finding of fact by the Chancellor below that incidents of violence had occurred. The Chancellor below was not faced with the problem of making this decision. The affidavits filed by the Appellants in opposition to the Appellees' prayer for injunctive relief either expressly admit the incidents of violence or fail to deny the same.

The Appellants do not deny that the incidents of violence were of such a nature as to be an integral part of the picketing. The Appellants do not deny that most of the incidents of violence took place at or near the picket line. Their sole defense to the Appellees' prayer for injunctive relief consists of their denial of responsibility for such incidents of

violence. This denial of responsibility is not surprising. Almost every outbreak of violence resulted in the arrest of the participants. There were charges and counter-charges filed in the municipal court of Miami Beach, Flor-[fol. 168] ida. We ask each member of this Court to search his memory for an incident where a participant in a fight, when faced with the possibility of fine and imprisonment, freely admitted responsibility for starting the disturbance.

There is ample evidence of violence to support the findings of fact which prompted the Chancellors below to issue injunctions in the cases involving the Sea Isle Hotel, Casablanca Hotel and Empress Hotel. The Appellants, in their brief, describe the incidents of violence which existed in the cases of the Sea Isle and Casablanca hotels and then dismiss the same as trivial and insufficient. The Appellants, however, judiciously avoid reciting the long series of outbreaks of violence which existed in the case of the *Empress Hotel*. This reluctance on the part of the Appellants to view frankly and realistically the record in the case of the Empress Hotel is highlighted by the fact that the Appellants, in stating the "facts" in the Empress case, content themselves with merely quoting a small portion of the decree entered by the Chancellor below and omitting therefrom the Chancellor's basic findings of fact.

Frequent outbreaks of violence were admitted. The safety and welfare of the community demanded action. Assuming, without admitting, that a determination concerning the responsibility for such outbreaks would prevent the Chancellor from protecting the community by the exercise of the power of injunction, the Chancellor did, nevertheless, make express findings of fact concerning this issue. We quote from the order:

> ". . . the Court is inclined to the view that defendants or pickets were responsible for the fights, in the main, for two reasons: (1) because there was a general prac-[fol. 169] tice among the pickets and those working with them to curse the employees and to call them names which usually bring on a fight, and (2) because defendants' contention against violence is inconsistent with the grouping of off-duty pickets and other persons in cars or on bus-stop corners nearby, occasional

threats 'to get' an employee within his hearing and following an employee's car after such a threat, the photographing of employees entering or leaving the premises, and picketing in such a manner to hinder, if not actually obstruct passage of persons and vehicles at times at entranceways or driveways, all of which I find to have been present to some substantial degree . . . "

That the Chancellor has broad discretion in making such determination of fact cannot be questioned. Justice Frankfurter, in *Milkwagon Drivers Union* v. *Meadowmoor Dairies*, supra, stated:

" . . . Judges need not be so innocent of the actualities of such an industrial conflict as this record discloses as to find in the Constitution a denial of the right of Illinois to conclude that the use of force on such a scale was not the conduct of a few irresponsible outsiders. The Fourteenth Amendment still leaves the state ample discretion in dealing with manifestations of force in the settlement of industrial conflicts. And in exercising its power a state is not to be treated as though the technicalities of the laws of agency were written into the Constitution . . . "

The record in the case of the Empress Hotel is filled with evidences of threats, force, violence, coercion and intimidation. James Stevens Mullaly, the cabana boy, stated that on the night of May 5, 1955, near the entrance of the hotel, he was cursed by a man who called him a "scab and strikebreaker" and that this man struck him about the face and neck, resulting in severe bruises and a split lip which required treatment in the form of the taking of stitches at Mount Sinai Hospital (Appendix 24-29). This witness was again attacked on the day of May 6, 1955, by a man [fol. 170] wearing a picket sign and on the evening of May 6, 1955, he was followed from the hotel by a car containing men whom he recognized as pickets. (App. 24-29). On the morning of May 5, 1955, a man approached the entrance of the hotel in order to seek employment. He was addressed by one of the pickets and a fight followed, result-

ing in the arrest by the Miami Beach police of both parties (App. 30-44). On May 7, 1955, one John McCormick, a bartender at the hotel, emerged from the front entrance of the hotel and was addressed by a man carrying a picket sign who cursed him and as he attempted to pass, tripped him and pushed him forward, causing him to fall with great force upon his face, resulting in badly tearing his clothing and bruising and skinning his leg and knee. The two men grappled together and fell to the ground and upon being separated by bystanders, the picket forcefully struck the bartender in the face. (App. 45-47). On the morning of May 8, 1955, one Joe Lee King, a plumber at the hotel, while going about his duties, passed near one of the pickets and the picket shouted at him: "There goes a scabbing son of a bitch." King turned toward his assailant and the picket then raised his arms to strike him. A fight followed, resulting in the arrest of both parties. (App. 48-51). On the morning of May 9, 1955, one Howard Lockwood, operating engineer in charge of the electrical fixtures at the hotel, in carrying out his duties, passed near the entrance of the hotel, carrying a box of light bulbs. A picket approached him and shouted: "You lousy scab bastard," and violently shoved him, causing him to drop the lightbulbs. A fight ensued and the parties were finally separated by bystanders. The incident resulted in the arrest of both parties. [fol. 171] (App. 54-57). On May 12, 1955, Joe Lee King, the plumber at the hotel, was again attacked by men on the picket line. King stated that as he was attending to his duties, he started to cross Collins Avenue from the Empress Hotel to the International Hotel and was approached by a picket who shouted: "There goes that same scab, the dirty son of a bitch!" The picket pushed him to the ground and struck him about the face and body. Another picket rushed forward, grabbed King by the foot and began to pull him toward the street. A third man also rushed forward and began to strike King about the face and body and attempted to kick him. The parties were finally separated and this incident also resulted in the arrest by the Miami Beach police of the participants in the fight. Phil Harris, a guest at the hotel, witnessed this incident and

stated that when he observed three men inflicting a beating on King who was on the ground and helpless, that he rushed forward and attempted to pull one of King's assailants away and pleaded: "Get off. You will kill the guy." (App. 51-53 and 63-64).

Aside from these outbreaks of actual physical violence, the record is replete with threats, intimidation and coercion. Howard Lockwood, the electrical engineer, who had been involved in a fight on the picket line on May 9, 1955, stated that about 12:15 A. M. on May 13, 1955, after completing his work at the Empress Hotel, he entered his car which was parked on Collins Avenue and started to drive to his home. A car which was parked nearby began to follow him and he recognized the occupants as men he had seen on the picket line. Lockwood tried desperately to escape from his [fol. 172] followers, even resorting to driving through red traffic lights, but his pursuers continued to follow him. Lockwood stated that he finally returned to the area of the Empress Hotel and his followers disappeared, apparently not desiring to be seen following him in the hotel area. Lockwood states that he did not come to work in his car the following day because of his experience of being followed when he attempted to drive home. At approximately 2:30 A. M. on May 13, 1955, Lockwood was asleep at his home and was awakened by the glare of flames blazing up from the car which was parked outside his window. Lockwood rushed from his home and found kerosene-soaked paper in and around his car and observed two men running from the scene. Lockwood's testimony was to the effect that he was especially uneasy and apprehensive following the fight which occurred on the picket line on May 9th, because after the arrest of all of the participants in the fight and upon leaving the police station, one of his attackers shook his finger in his face and stated: "I will get you yet, you son of a bitch." (App. 57-62).

Isidore Kowal, the president of International Company, Inc., the owner and operator of the Empress Hotel, was the recipient of frequent threats from both union organizers and pickets. On May 1, 1955, just prior to the fight and picketing, the defendant, David Herman, an (sic) union organizer, telephoned Kowal and stated: "Now, you see,

we won our case in the courts. Are you ready to sign up?" Kowal replied that some organizers of this union had spoken to his son who was then in Detroit. Herman replied: "Detroit, hell. They haven't got anything to do with [fol. 173] this. I am one of the boys from New York and I know how to handle this. You either sign up or I am going to strike your hotel." On the afternoon of May 2, 1955, Kowal observed groups of men, some of whom were union organizers, sitting about the porch of the International Hotel which is immediately across Collins Avenue from the Empress Hotel and which is also owned and operated by International Company, Inc. Kowal asked them to leave because they were annoying the guests and he asked them what they wanted. They replied: "None of your business" and refused to leave the hotel premises. (App. 65-71). On May 5, 1955, when an attack was made upon James Mullaly, the Empress Hotel's cabana boy, Kowal came forward with others in their attempt to put an end to the fight and Mullaly's assailant waved his fist in Kowal's face and threatened: "We are going to get you, too." (App. 65-71). On May 9, 1955, Kowal was waiting for a car at the Algiers Hotel where he had attended a meeting. While standing there alone, two men, one of whom he recognized as Ted Anderson, a union organizer, approached him. Anderson pointed his finger in Kowal's face and said: "That is the fellow from the Empress Hotel we have to get." (App. 65-71). On the afternoon of May 12th, at which time Joe Lee King, the plumber at the Empress Hotel, was involved in a fight, Kowal rushed to the scene, shouting: "They are killing my man!" When the fighters were separated, one of them, wearing a picket sign, shouted: "We will get even with you. We are going to break you." (App. 65-71). During the picketing when the picketing and strike were in progress, Kowal received several telephone calls, the speakers stating: "We are going to break you. You will [fol. 174] have to give in." (App. 65-71).

In addition to these direct personal threats, there were frequent threats to employees, especially during the times when a new crew of employees was coming to work. At the time of the initiation of the strike and picketing, large groups congregated upon the street corners in the area and shouted to the employees as they approached the hotel:

"Don't go in there. It won't be good for you if you go through the picket line." Kowal stated that it was necessary to provide automobile transportation for some employees who were afraid to cross the picket line. The employees would be taken from their homes and driven through the picket line in cars and deposited at the immediate entrance to the hotel. Other employees were afraid to return to their homes from their work and the management provided escorts to take them from the International Apartments through the picket lines to the entrances of the Empress Hotel. There is abundant evidence in the record in the form of statements from hotel management, hotel employees and outsiders, testifying to the fact that large groups would habitually congregate in and around the hotel premises. Pictures are in evidence, attached to the affidavit of Isadore Kowal, indicating that the pickets would often walk two abreast and that groups would congregate in and about the picket lines. (App. 65-71).

Many individual employees made statements concerning the personal threats which were directed toward them. Olive Lambert, a maid at the hotel, stated that as she approached her work on May 5, 1955, one of the pickets attempted to block her entrance and shouted: "There goes [fol. 175] that colored scab!" (App. 72-74). Margie Slaney, a waitress at the hotel, stated that at the time the strike and picketing were commenced, union organizers entered the dining room and began shouting and yelling: "Get out. A strike has been called. There will be pickets marching." One union member shouted: "We will make it hot for you." (App. 75-79). Margie Slaney, Mary Shore and Alma Brace stated that on the evening of May 4, 1955, as they drove away from the Empress, a car in the immediate vicinity of the picket line followed them, that they were unable to lose this car and that they entered the driveway of the Royal York Hotel and called the Miami Beach police because they were afraid of their followers. (App. 80-87).

This brief review of the voluminous evidence of violence indicates why the Appellants, in their brief, have gingerly avoided making any reference to the record in the case of the Empress Hotel. The Appellants characterize this long series of incidents of violence as "isolated, trivial and remote" and would have this Court review such record and

conclude that the evidence was not such as to permit the Chancellor, in his discretion, to protect the community's welfare by the exercise of the power of injunction.

The Appellants, on Pages 39 and 40 of their brief, enumerate the incidents of violence which existed in the case of *Milkwagon Drivers' Union* v. *Meadowmoor Dairies*, supra, and *United States* v. *Railway Employees Department, A. F. of L.* (1923) 290 Fed. 978. These cases are striking examples of the dire results that can follow where [fol. 176] picketing in a context of violence is allowed to go too long unchecked. These two cases can certainly be cited as authority for the proposition that the records in those cases contain sufficient evidence of violence to warrant injunctive relief. The Appellants would cite them for the proposition that less violence is insufficient to warrant such relief. We are sure that the families of the nineteen people who were killed in the violence surrounding the case of *United States* v. *Railway Employees' Department, A. F. of L.*, supra, took little comfort in the fact that violence was allowed to continue to this degree because the courts were extremely jealous of their rights as citizens to exercise free speech.

The Chancellor must exercise his discretion in determining whether the danger described in the opinion in *Milkwagon Drivers Union* v. *Meadowmoor Dairies*, supra, and *Moore* v. *City Dry Cleaners & Laundry*, supra, exists. The judicial process is not that of a slot machine into which data in the form of numbers of deaths, beatings or window-smashings is fed, and from which a card emerges, stamped: "Dangerous" or "Safe."

Point V

The Sovereign State of Florida by Delegating to the Congress of the United States the Power to Control Interstate Commerce Was Not Divested of Its Inherent Police Power to Prevent Acts of Violence or Peaceful Acts Directed to a Purpose Contrary to the Public Policy of the State.

Throughout the entire length of the Appellants' brief, repeated reference is made to the guarantees afforded the

[fol. 177] people by certain parts of the Constitution of the State of Florida and the Constitution of the United States of America.

Although the Appellants constantly refer to various parts of the Constitution of the United States and to the guarantees afforded to the people thereby, the Appellants are conspicuously silent with regard to the Tenth Amendment of the Constitution of the United States and the Fundamental guarantees which it affords to the States and to the people thereof.

> "The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people."

The appellants contend that the Appellees are engaged in interstate commerce. This, the Appellees emphatically deny and the same has been denied by everybody, judicial or administrative, before which the issue has been raised. The fact is entirely immaterial to any issue involved in these cases, however, and the proffered evidence of the Appellants was properly rejected. Even in the field of interstate commerce, the State is not deprived of its inherent police power to protect the health, safety, morals and welfare of it communities.

The Appellants cite the cases of *Garner* v. *Teamsters, Chauffeurs & Helpers Local Union,* 74 Sup. Ct. 161, 346 U. S. 485, (1953) and *O'Brien* v. *Auto Workers,* 339 U. S. 454, 70 Sup. Ct. 781, (1950), for the proposition that the judicial tribunals of the sovereign state must silently and helplessly observe from the sidelines while witnessing either acts of violence or acts of coercion directed toward [fol. 178] a purpose contrary to the declared *public policy* of the state as set forth in its constitution and statutes.

The holdings of the cases are narrow in scope and they cannot be cited for the sweeping proposition advanced by the Appellants. This is clearly stated by Justice Roberts in the opinion in the case of *Garner* v. *Teamsters, Chauffeurs & Helpers Local Union,* supra:

> "The national Labor Management Act, as we have before pointed out, leaves much to the states, though

Congress has refrained from telling us how much. We must spell out from conflicting indications of Congressional will the area in which state action is still permissible.

"This is not an instance of injurious conduct which the National Labor Relations Board is without express power to prevent and which therefore either is "*governed by the state or it is entirely ungoverned.*' In such cases we have declined to find an implied exclusion of state powers. International Union, U. A. W., A. F. of L., Local 232 v. Wisconsin Employment Relations Board, 336 U. S. 245, 254, 69 S. Ct. 516, 521, 93 L. Ed. 651. Nor is this a case of mass picketing threatening to employers, obstructing streets and highways, or picketing homes. We have held that the state may still exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' Allen-Bradley Local No. 1111, United Electrical Radio and Machine Workers of America v. Wisconsin Employment Relations Board, 315 U. S. 470, 749, 62 S. Ct. 820, 825, 86 L. Ed. 1154. Nothing suggests that the activity enjoined threatened a probable breach of the state's peace or would call for extraordinary police measures by state or city authority. Nor is there any suggestion that respondent's plea of federal jurisdiction and preemption was frivolous and dilatory, *or that the federal Board would decline to exercise its powers once its jurisdiction was involved.*" (Emphasis supplied).

Should the National Labor Relations Board attempt to [fol. 179] assert jurisdiction over the Appellees for the purpose of administering the provisions of the Labor Management Relations Act of 1947, this would not oust the State of Florida of its traditional police power. *United Automobile and Aircraft and Agricultural Implement Workers of America, C. I. O.* v. *Wisconsin Employment Relations Board*, Sup. Ct. of U. S. 100 L. Ed. 666 (Decided June 4, 1956). It follows with an even greater clarity that the State retains the right and has an increasing moral

duty to act for the protection of its citizens where the National Labor Relations Board refuses to take jurisdiction over an entire industry. The National Labor Relations Board has traditionally refused to assert jurisdiction over the hotel industry. The petition of the Appellees was refused by the Board in *In Re Hotel Members of Miami Beach Hotel Association,* Case No. 10-RC-3135, wherein the Board referred to the decision and order in *Virginian Isles Hotel, Inc.,* Case No. 110-NLRB, No. 65, which reiterated the Board's "long-standing policy not to exercise jurisdiction over the hotel industry." The Appellants, at Page 41 of the Appendix to their brief, refer to the case of *Your Food Stores of Santa Fe* v. *Retail Clerks' Local 1564* (1955) 225 Fed. 2d 659. This case is not comparable to a situation where the National Labor Relations Board has historically maintained a hands-off policy. In this case, the Federal District Judge stated that "the refusal of NLRB to exercise its jurisdiction in *a particular case* does not revest the state court with jurisdiction *in that case.*" (Emphasis added). Contrast this with the present situation where we find an entire industry in which actions of vio-
[fol. 180] lence or actions directed toward a purpose in conflict with the declared policy of the State will go unrestrained unless the State asserts its power. In the present situation, the National Labor Relations Board never acquired jurisdiction.

The cases now before this Court present a situation described by Justice Roberts in *Garner* v. *Teamsters, Chauffeurs & Helpers Local Union,* supra, where the danger must be "*governed by the state or it is entirely ungoverned.*"

Conclusion

From the records in the three cases before this Court, it affirmatively appears that the activities of the Appellants were done in violation of the Constitution of the State of Florida, the enactments of the Legislature and the law of this State as set forth in the opinions of this Court.

The law of the State of Florida, as set forth in the Constitution of the State of Florida, the enactments of the Legislature and the opinions of this Court, does not violate

any provision of the Constitution of the United States of America.

The law of the case, established by this Court's prior adjudication upon an identical record, demands affirmance of the final decree in the case of the Versailles Hotel and from the record in each case, there affirmatively appears evidence to support the findings of the lower court that the actions of the Appellants were illegal and were properly enjoined.

[fol. 181] The final decrees rendered below should be affirmed.

Respectfully submitted this 22nd day of August, 1956.

Patton & Kanner, 213 Shoreland Building, Miami 32, Florida, Attorneys for Appellees, Morris Lansburgh, et al.; R. S. Levy, et al. and International Company, Inc., et al. By /s/ Samuel J. Kanner, Of counsel.

[fol. 182] *Duly sworn to by Samuel J. Kanner, jurat omitted in printing.*

[fol. 184a] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. A]

IN THE SUFREME COURT OF FLORIDA

Case No. 28,252

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), et al., Appellants,

v.

MARTINIQUE HOTEL, INC., a Florida corporation, Appellee.

Transcript of Record—Filed April 5, 1956

J. W. Brown and Gramling & Gramling, 226 Shoreland Building, Miami, Florida, Attorneys for Appellants.
Sibley & Davis, Thomas H. Barkdull, Jr., 605 Lincoln Road, Miami Beach, Florida, Attorneys for Appellee.

[fol. 1]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180445

MARTINIQUE HOTEL, INC., a Florida corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL 255 (AFL), DAVID HERMAN as director of organization of said Local, CLARENCE L. SMITH, ALBERT H. BERLIN and HENRY K. MISCHEL, as business agents and officers of said Local, Defendants.

COMPLAINT FOR INJUNCTION—Filed June 10, 1955

1. The plaintiff is a Florida corporation. Hotel Employees Union, Local 255, A.F.L., is a labor union or labor organization within the meaning of Chapter 447, Florida Statutes. David Herman is the director of the organiza-

tion of said union, and Clarence L. Smith, Albert H. Berlin and Henry K. Mischel are the business agents and officers of said union.

2. The plaintiff is the owner of a hotel known as the Martinique Hotel, situated on the ocean at 6423 Collins Avenue, Miami Beach, Florida. It is operated in accordance with high standards of service, accommodations and appointments, and is what is known locally as a luxury hotel. Its accommodations consist of 140 rooms together with cabanas, a private beach, card rooms, television rooms, and cocktail lounge. In order to render the services which are necessary to maintain the standards necessary to attract and keep satisfied guests, the plaintiff employs approximately ninety persons in its hotel. Said employees are paid acceptable wages as large as those employed by similar hotels in the area, working conditions are satisfactory, acceptable hospitalization, medical and surgical care is provided, and no employee has ever registered a grievance with the plaintiff concerning his hours of work, rate of pay, or general working conditions.

[fol. 2] 3. Shortly before the enumeration of the events hereinafter set forth, the defendant David Herman communicated with Saul Cohen, the president of the Miami Beach Hotel Owners' Association, and demanded that he procure all of the owners of the ocean-front hotels in Miami Beach to execute labor contracts with the defendant labor organization and thereby recognize that said union represented the employees in said hotel. In this fashion, the said David Herman proposed to procure memberships in his union of the employees of said hotels, which was the purpose for which said union had been organized. The said Herman and the defendant Albert H. Berlin had theretofore undertaken, by direct solicitation, to secure the various employees in said hotels as members of such union but had failed so to do, and thereupon determined to proceed against the hotel owners through the instrumentality of the said association. The said Herman threatened the said Cohen by stating to him that unless the hotel owners recognized said union and gave it the desired contract, Herman would, through economic sanctions

such as picket lines placed around the hotels, cause them great loss and thereby force them to give to the said union contracts covering the employees in said hotels, who were not, in fact, members of or represented by said union. The said Cohen informed the said Herman that neither he nor the said association had power or authority to represent the owners of the individual hotels in reference to any labor matter involving any particular hotel.

4. Thereupon the said Herman proceeded to distribute throughout the City of Miami Beach, and in many cities elsewhere, handbills such as those attached hereto and marked Exhibits 1 and 2 which are true copies of the originals so distributed, and thereafter, in pursuance of the threats made to the said Saul Cohen and in an attempt to punish the owners of said hotels, proceeded to cause picket lines to be placed around various and sundry hotels on Miami Beach with the result that a great deal of unfavorable publicity was created in northern cities concerning the availability of hotel accommodations in Miami Beach. In cooperation with the defendant labor organization, the said David Herman procured the New York Hotels [fol. 3] Trade Council, A.F.L., to distribute widely in New York City a circular, a true copy of which is attached hereto marked Exhibit 3.

5. The hotels around which said picket lines were thrown have, from time to time as such lines were established, sought injunctive relief from the Circuit Court of Dade County, and said injunctions have, in the main, been granted. As injunctions have been granted in each case, the defendants have complied therewith but have moved to other locations with the idea of extending the pattern of such behavior, as outlined in the threat to the said Saul Cohen, and in an effort to cause conformance to their demands on the part of other hotel owners whose premises have not been subject to picket lines.

6. In an effort to carry out their dual plan of intimidation of employees and the enforcing of the economic sanctions against the employers, the defendants have caused to be circulated to large numbers of people and as many hotel employees as they could reach, handbills such as that

attached hereto marked Exhibit 4, notwithstanding which the majority of the employees of the various hotels which have been struck by the defendants have not become members of said union, and the statements in said handbill, Exhibit 4, are false and untrue and known to be so by the persons circulating them.

7. On June 4, 1955, the defendant David Herman caused to be served upon the plaintiff a letter which, together with its exhibits, consisted of four pages, in which letter it was stated that the defendant union represented "a substantial number" of the plaintiff's employees, and in said letter a demand was made upon the plaintiff to meet with the said Herman and to settle with him the grievances and complaints specified in said letter through negotiation, and upon such settlement to reduce it to writing and duly execute the same. The letter contained a statement to the effect that unless an affirmative reply was received by the said Herman by June 8, 1955, it would be understood that [fol. 4] the plaintiff did not wish to meet with him or adjust the alleged differences, in which case the union would feel free to take whatever action would protect the interest of its members, including the publicizing of the facts and by picketing. Upon receipt of such communication, the plaintiff wrote to the defendant union and said that upon receipt of the names of the employees which the union claimed to represent, together with trustworthy proof that such employees have designated the union to represent them, the plaintiff would communicate with the union regarding such matter. This communication was sent to the defendant union under date of June 7, 1955, and the contents of the letter were communicated to an agent of the defendant union on that date.

8. At 10:30 o'clock A.M., on June 8, 1955, and without having given the plaintiff the information requested in said letter, the defendants unlawfully, and in furtherance of the aforesaid plan and conspiracy, placed a picket line around the plaintiff's hotel, the line consisting of men carrying placards reading substantially as follows: "This hotel refuses to negotiate. Hotel Employees Union, Local 255, American Federation of Labor."

9. The presence of said picket line has caused and will continue to cause the plaintiff severe economic loss, the extent of which is incalculable. Persons desiring to obtain accommodations in plaintiff's hotel have driven onto the premises and, having ascertained from the doorman that a strike was being called on the plaintiff's hotel, have departed. On the morning of June 8, 1955, a story appeared in the New York Post to the effect that the plaintiff's hotel employees were on strike, and as a result two people who proposed to come to Miami Beach and stay at plaintiff's hotel said that they were afraid to go there. The Railway Express Company refused to deliver perishable commodities, including frozen foods, to the plaintiff's premises but instead deposited them in the street where they had to be picked up by plaintiff's employees. For a period of several days, the defendants have caused illegal strikes [fol. 5] and walkouts to be called in violation of the statutes of the State of Florida at numerous hotels in the City of Miami Beach, Florida. The defendant, in violation of the statutes of the State of Florida, has engaged in picketing for illegal purposes at the plaintiff's hotel and at many other hotels in the City of Miami Beach, Florida. The defendants have widely publicized their activities throughout the United States by newspaper advertisments and otherwise, indicating and directing the public's attention to the hotels where illegal strikes and walkouts have been called and where illegal picketing is being conducted, falsely publicizing a disruption of service at such hotels. Such publicity is designed and calculated by the defendants to deter guests who have reservations and prospective guests from visiting or coming to hotels in which illegal strikes have been called or where illegal picketing is being conducted. The defendants, in picketing the plaintiff's hotel, have subjected it and incorporated it as a part of their overall design to deter guests from coming to the said hotel by falsely publicizing a non-existent labor dispute and directing attention to the presence of pickets which the defendants publicize as an indication of the disruption of service. In order to maintain and enforce the economic sanctions above referred to, the defendants have caused additional hotels to be illegally picketed as fast as their

illegal picketing of other hotels has been enjoined, thus constantly maintaining a vehicle to attract the attention to their libelous and false publications.

10. A majority of the employees of the plaintiff have not voted to participate in any strike, walkout, or cessation of work, and the defendant union has not been designated by a majority of the plaintiff's employees as their elective bargaining agent.

11. The defendants have never provided the plaintiff with proof that the defendant union represents a majority of the plaintiff's employees, or which employees, if any, the defendants in fact do represent. On the contrary, the plaintiff has been apprised by a majority of their employees [fol. 6] that the defendant union does not represent them and that a majority of said employees do not desire to have the defendant union represent them. The defendant union, through its unlawful conduct, seeks to force the plaintiff to execute a contract with it in order that the defendant union might use such contract to coerce and force the plaintiff's employees to become members of the defendant union.

12. The defendants have engaged in vandalism and violence in other hotels which they have picketed. All of the hotels located in the City of Miami Beach are in close proximity to each other, and the pickets used by the defendants have congregated along the entire area where the hotels are situated so as to subject all of the hotels to the effect of the picketing being conducted at individual hotels. The actions of the defendants, as hereinabove alleged, are designed and calculated to disseminate false information as to the services available in the plaintiff's hotel and other hotels, to publicize the presence of a picket line, to indicate illegal or non-existent strikes, and thus to induce both a voluntary and involuntary boycott of the plaintiff's hotel and other hotels, and the actions of the defendants are contrary to the expressed desire of the majority of the plaintiff's employees and that the actions of the defendants will prevent the operation of the plaintiff's hotel and thus affect the employment of employees

who are not members of the union and who do not wish to have the union represent them.

13. The defendant union by its actions has imposed economic sanctions upon the plaintiff and operators of other hotels in order to achieve an illegal purpose. The conduct and actions of the defendants are an overall design directed towards all hotels within the City of Miami Beach, Florida, to bring about a recognition of the defendant union by all the hotels as the collective bargaining agent for all hotel employees, notwithstanding the fact that, as hereinabove alleged, the defendant union does not represent such employees or that such employees have not designated the defendant union as a bargaining agent.

[fol. 7] 14. The defendants, individually and collectively, are engaged in actions which are in violation of the laws of the State of Florida and the Constitution of the State of Florida in that the said defendants are attempting by their actions hereinabove alleged to:

(a) be designated the collective bargaining agent for employees they do not represent;

(b) deny the employees of the Martinique Hotel the right to work because they are not members of the defendant union;

(c) establish a picket line for an illegal purpose;

(d) falsely publicize a non-existent labor dispute.

15. The actions of the defendants are designed and intended to inflict such an economic injury to the economy of the City of Miami Beach as to compel the various hotel owners to capitulate to the defendants' demands in the public interest, as well as in their own; and if the defendants are permitted to maintain picket lines in front of the several ocean-front hotels in Miami Beach, the result will be that a severe blow will be dealt to the economy of that city because holiday vacationers will not submit to the annoyance and harassment that inevitably accompany the maintenance of picket lines around places where such vacationers are staying.

The Premises Considered, the plaintiff prays that the court will temporarily enjoin and restrain the defendants from maintaining a picket line or from picketing the property of the plaintiff and from doing any other or further acts in pursuance of the plan set forth in the complaint which are reasonably calculated to prevent the public from patronizing the plaintiff's hotel, and that on final hearing said injunction be made permanent.

Sibley & Davis and Anderson & Nadeau, 908 First National Bank Bldg., Miami 32, Florida, By /s/ Thomas Anderson, Attorneys for Plaintiff.

[fol. 8] *Duly sworn to by Jack Fineberg, jurat omitted in printing.*

[fol. 9]

EXHIBIT 1 TO COMPLAINT

WHY THE PICKETING AT MIAMI BEACH HOTELS?

ON FEBRUARY 25th, Hotel Employees Union, Local 255, American Federation of Labor, announced a peaceful campaign to unionize hotel employees of Miami Beach.

ON MARCH 3rd, a union representative met with SAM RIVKIND, who was then Executive President of the Miami Beach Hotel Association, and suggested a conference with the Association to discuss the problem. The suggestion was REJECTED.

ON MARCH 23rd, representatives of the Union met with SAUL COHEN, President of the Hotel Association, and suggested a conference between the Union and Association. The suggestion was REJECTED.

ON MARCH 30th, the Union sent letters to LEON C. McASKILL, Executive Director of the Association, and to

EVERY MEMBER of the Association Board of Directors, requesting a conference. All of those letters WERE IGNORED!

SINCE THE HOTEL ASSOCIATION CLOSED ITS EYES TO ITS EMPLOYEES' SIGNALS OF DISTRESS, THE ONLY COURSE LEFT WAS TO OPEN THEM "THE HARD WAY." THE EMPLOYEES ARE PICKETING TO CALL ATTENTION TO THEIR REQUEST FOR A CONFERENCE WITH THEIR EMPLOYERS

The right to organize and bargain collectively is a fundamental Law of the United States.

Only behind the "Iron Curtain" are workers denied that right.

Miami Beach hotel employees are acting in defense of their guaranteed American rights.

WE THANK YOU FOR YOUR SUPPORT AND WISH TO REMIND YOU THAT YOUR FINANCIAL CONTRIBUTIONS SHOULD BE MADE PAYABLE TO:

HOTEL EMPLOYEES UNION, LOCAL 255
AMERICAN FEDERATION of LABOR
1575 Washington Ave., Miami Beach Phone: JE 8-0539

[fol. 10]

EXHIBIT 2 TO COMPLAINT

THE SITDOWN STRIKE OF THE MIAMI BEACH HOTEL OWNERS

—Hundreds of hotel workers are walking picket lines.

—Conventions are being transferred and cancelled.

—Package tours are being cancelled and/or diverted to other areas.

—The entire community is growing anxious as June, July and August approach.

YET, MOST OPERATORS OF MIAMI BEACH HOTELS ARE SITTING AS THE MIGHTY SPHINX, SILENT AND IMMOVABLE.

They ignore the will of their workers.

They ignore the law of the land.

They ignore Miami Mayor Abe Aronovitz.

They ignore the plea of the Council of Presidents.

WILL THEY EVEN IGNORE THE GOVERNOR OF FLORIDA?

The Nero of history fiddled while Rome burned. The hotel owners are on sitdown strike while the community suffers.

The way for the community to get back to normal is to demand that the hotel owners call off their sitdown strike and start negotiating with the union. *It Is Not Too Late To Save July and August!*

HOTEL EMPLOYEES UNION, LOCAL 255
AMERICAN FEDERATION OF LABOR
1575 Washington Ave. Miami Beach Phone: JE 8-0539

McM (Union Label) 26

[fol. 11] EXHIBIT 3

Clerk's Note: Hand Bill missing from this record. Titled Are You Going To Miami Beach.

[fol. 12]

EXHIBIT 4 TO COMPLAINT

TO PATRONS

OF MIAMI BEACH HOTELS:

SORRY TO INCONVENIENCE YOU!

—You Pay TOP Rates For The 'BEST' In Hotel Service - -

And Yet

—Wages of Many of Employees who provide this 'BEST' Service are THE LOWEST in the United States!

—Whenever You See A Miami Beach Hotel Being Picketed, You Will Know That The OVERWHELMING MAJORITY of Employees Of That Hotel Refuse To Work Until Management Agrees To Recognize Their Employees Union And To Bargain Collectively In The AMERICAN WAY!

HOTEL EMPLOYEES UNION, LOCAL 255

AMERICAN FEDERATION OF LABOR

1575 Washington Ave. Miami Beach Telephone JE 8-0539

(Union Label) 14

[fol. 13]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180445

[Title omitted]

AFFIDAVIT OF JACK FINEBERG—Filed February 20, 1955

State of Florida,
County of Dade, ss.:

Jack Fineberg, being first sworn, says that he is an officer of Martinique Hotel, Inc., and is authorized to make this affidavit on its behalf.

1. The plaintiff in the above cause employs 92 persons in its hotel who perform various services therein, such as elevator operators, doormen, chambermaids, bell hops, waiters, kitchen help, and so forth; that subsequent to June 8, 1955, the day on which the defendants first placed a picket line on plaintiff's Hotel, affiant conducted an inquiry among plaintiff's employees to ascertain whether a majority of such employees had designated the defendant union as their bargaining agent, and out of the first 75 employees approached 55 signed a written statement to the effect that they were not represented by said union and did not desire to designate it as their collective bargaining agent; that the remaining 17 employees were not interrogated and their wishes are not known.

2. On June 8, 1955, affiant saw a car arrive at the plaintiff's hotel and depart, and upon inquiry from the doorman [fol. 14] ascertained that the occupants of the car had stated that they would not cross a picket line. A similar incident was reported by another employee, and on one or two occasions prospective guests have informed affiant that they would not stay there because of the picket line. An investigation into general conditions prevalent among travel agencies in Cincinnati, Columbus, Chicago and Dayton has revealed the fact that the presence of picket lines and the agitation created by defendants' handbills has

deterred many people from coming to Miami Beach where they would normally have patronized ocean-front hotels including that of the plaintiff.

3. Affiant has been an officer of plaintiff's hotel since November 1953, on which date the plaintiff became the owner of the premises on which the hotel is built. He is one of the stockholders of the corporation which owns the Martinique Hotel. The corporation has had cordial relations with all of its employees since that time and has had no complaints from anyone regarding hours or pay. All employees work only 8 hours and are paid according to the prevailing wage scale obtaining among similar establishments.

4. Plaintiff has an investment of $1,100,000 in the Martinique Hotel and has subsequently invested $250,000 in additional equipment.

/s/ Jack Fineberg

Sworn To And Subscribed Before Me, this 14 day of June, A. D. 1955.

/s/ Herbert L. Nadeau, Notary Public, State of Florida.

My commission expires: Dec 12, 1955. Bonded by American Fire & Casualty Co.

(Seal)

[fol. 15]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180445

[Title omitted]

AFFIDAVIT OF FRANCES BARNETT—Filed February 20, 1955

State of Florida,
County of Dade, ss.:

Before me, the undersigned authority, this day personally appeared Frances Barnett, who, after being duly

sworn, disposes and advised that she resides at 3586 North West 41st Street, Miami, Florida; that she has been a resident of Dade County for approximately 5 years and has been employed at the Martinique Hotel, 6423 Collins Avenue, Miami Beach, Florida and that her employment at said hotel has been as Food Checker which duties entail the checking of food leaving the kitchen for the dining room; that she is daily in direct contact with the majority of the employees of said hotel; that she knows of her own knowledge from meetings of the employees which she attended and participated in that the majority of the employees of said hotel are not interested in joining the Union and are not interested in having the Defendant Hotel Employees Local Union 255 designated as bargaining agents for said hotel; that the majority of the employees of said hotel are satisfied with the present wages, hours and working conditions and that the majority of the employees of said hotel have expressed themselves as being of the firm opinion that the Union can do nothing which would improve the working conditions of said employees.

/s/ F.B.
/s/ Frances Barnett

(Seal)

Sworn To And Subscribed Before Me, this 14 day of June, A. D. 1955.

/s/ Herbert L. Nadeau, Notary Public, State of Florida.

My commission Expires: Dec. 12, 1955. Bonded by American Fire & Casualty Co.

(Seal)

State of Florida,
County of Dade, ss.:

Before me, the undersigned authority this day personally appeared, Carlo Giovanardi, after being duly sworn, disposes and says that he has been employed at the Martinique Hotel, Miami Beach, Florida for a period of over one year; that while he is not in an employee classification

covered by the Union, he has no desire that the Hotel Employees Local Union #255 act as his bargaining agent; that he is perfectly satisfied with the present wages, hours and working conditions at said hotel. The affiant knows of his own knowledge, that the Management made a canvass of all employees as to whether or not they were desirous of having the Union negotiate in their behalf as their bargaining agent and that said employees were informed that if they expressed a desire for the Union to represent them that said choice would in nowise effect their present employment and it was within their rights to choose the Union if they saw fit.

/s/ Carl Giovanardi

(Seal)

Sworn to and Subscribed Before Me, this 14 day of June, A.D. 1955.

/s/ Herbert L. Nadeau, Notary Public, State of Florida.

My commission Expires: Dec. 12, 1955. Bonded by American Fire & Casualty Co.

(Seal)

[fol. 17]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180445

[Title omitted]

AFFIDAVIT OF WARTHA FORD—Filed February 20, 1955

State of Florida,
County of Dade, ss.:

Before me the undersigned authority this day personally appeared Wartha Ford, who after being duly sworn, disposes and says that he has been employed as a porter by the Martinique Hotel, Miami Beach, Florida since September 5th, 1950; that he is 29 years old; that he is perfectly

satisfied with the wages, hours and working conditions at the said hotel; that he does not want the Hotel Employees Union, Local 255 to represent him in the negotiation of any contract with the Management; that when the Management contacted all of the employees, your affiant voted against having the Union act for him; that affiant has discussed the matter with friends of his in the same employmer: who belong to the Union and he makes more money not belonging to the Union than they make belonging to the Union.

/s/ Wartha Ford
/s/ Ford Wartha

(Seal)

Sworn to and Subscribed Before Me, this 14th day of June, A.D. 1955.

/s/ Herbert L. Nadeau, Notary Public, State of Florida.

My commission expires: Dec. 12, 1955. Bonded by American Fire & Casualty Co.

(Seal)

[fol. 18]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180445

[Title omitted]

AFFIDAVIT OF GORDON JESSO—Filed February 20, 1955

State of Florida,
County of Dade, ss.:

Before me, the undersigned authority this day personally appeared Gordon Jesso, who after being duly sworn, disposes and says that he is General Manager of the Martinique Hotel, Miami Beach, Florida; that on June 13, 1955 at approximately 3 P.M. he received a long distant telephone call from a Mr. Nat Weisen of 130 West 12th Street,

New York, New York who had made reservation at the Martinique Hotel commencing June 22nd, 1955; that the said Mr. Weisen informed your affiant that he had heard a radio broadcast to the effect that the hotels in Miami Beach, Florida were on strike and that it was difficult to obtain any service whatsoever in a hotel that was on strike; he further informed the affiant that the radio station advised calling New York, Circle 5-7000 for further information; that affiant on June 14th, 1955 at approximately 1 P.M. called New York, Circle 5-7000 and asked for information about the so-called hotel strike in Miami Beach, Florida and what was the condition of the services being rendered; that the lady who answered the telephone, who later identified herself as Miss Milton, informed the affiant of the names of the hotels which were on strike and in so doing named the Martinique Hotel along with approximately twenty other hotels; that the said Miss Milton answering the telephone at Circle 5-7000 informed the affiant [fol. 19] that it was the New York office of the Hotel Employees Union, and she further stated that she definitely would not recommend going to any hotel which she had listed as being on strike, but recommended patronizing hotels which were not on strike; that she further informed your affiant that she did not know the names of the hotels who were not on strike but she would turn the affiant over to a gentleman who handled such matters; that this gentleman, however, was out to lunch at the time.

/s/ Gordon Jesso

(Seal)

Sworn to and Subscribed Before Me, this 14th day of June, A.D. 1955.

/s/ Herbert L. Nadeau, Notary Public, State of Florida.

My Commission expires: Dec. 12, 1955. Bonded by American Fire & Casualty Co.

(Seal)

State of Florida,
County of Dade, ss.:

Before me the undersigned authority this day personally appeared Doris Gillis, who after being duly sworn, disposes and says that she had read the foregoing affidavit of Gordon Jesso; that she listened in to the telephone call herein described and the foregoing facts are true.

/s/ Doris Gillis

(Seal)

Sworn to and Subscribed Before Me, this 14th day of June, A.D. 1955.

/s/ Herbert L. Nadeau, Notary Public, State of Florida.

My commission expires: Dec. 12, 1955. Bonded by American Fire & Casualty Co.

[fol. 20]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180445

[Title omitted]

ANSWER—Filed June 16, 1955

Come Now the defendants and make this their Answer to the Complaint and answering, say:

1. That they admit the identity of the parties hereto, as alleged in Paragraph 1.

2. That they are without knowledge as to the matters and things set forth in Paragraph 2, but aver that if the said hotel enjoys a fine reputation and valuable good will that such asset has been created in large measure by the excellence of performance by the many employees of said hotel while said employees are yet not recognized by the plaintiff through their duly designated representative of their own choosing, to-wit: Hotel Employees' Union Local

No. 255; and that the purpose of this instant litigation is to deprive the said employees who have contributed so richly to the success of plaintiff hotel of their constitutional and statutory guarantees of being represented for collective bargaining purposes by representatives of their own choosing.

3. Defendants deny each and every material allegation of Paragraph 3 of the complaint, as though each allegation was herein set forth and severally and categorically denied.

4. Defendants deny each and every material allegation of Paragraph 4 of the complaint, as though each allegation was herein set forth and severally and categorically denied.

5. Defendants deny each and every material allegation of [fol. 21] Paragraph 5 of the complaint, as though each allegation was herein set forth and severally and categorically denied.

6. Defendants deny each and every material allegation of Paragraph 6 of the complaint, as fully and completely as though each such allegation were herein at this point set forth and separately and categorically denied.

7. Defendants deny each and every of the material allegations of Paragraph 7 and would aver that these defendants have long sought a conference with plaintiffs whereby these defendants could by reasonable and responsible methods or evidence, establish the fact that the defendant union has been designated as the lawful bargaining representative by a large portion of its employees, in fact, an overwhelming majority of those employees, within the jurisdiction of defendant union.

Defendants further state that they did request Mr. Paul J. Weiss, certified public accountant of the State of Florida, to examine the books and records of defendant union to ascertain to his own satisfaction the number of employees of the plaintiffs, who have designated defendant union as their bargaining agent, and who are members of defendant union. That said Paul J. Weiss, Certified Public Accountant, did on the 3d day of June, 1955, determine such facts and did certify that forty employees of plaintiffs

were members of Local No. 255 and have designated Local No. 255 as their collective bargaining agent. Such certification was duly sworn to and certified before a Notary Public of the State of Florida.

Defendants further aver that an executed and notarized copy of such certification was delivered to the plaintiffs on the 3d day of June, 1955, together with a letter duly signed by David Herman, as Director of Organization of defendant union, advising plaintiffs that defendant union represents a substantial number of plaintiffs' employees as shown by the above referred to certification. Said letter further had attached to it a list of "requests to settle grievances and complaints". Said letter further requested plaintiffs to meet with a representative of the employees of plaintiffs who had designated Local No. 255 as their bargaining agent to settle such grievances and complaints. Plaintiffs were further advised by such letter that in the event they desired, such grievances and complaints would be submitted to a mutually [fol. 22] satisfactory arbitrator or to an arbitrator designated and selected by the American Arbitration Association, with both parties to abide by the rules of such arbitrator.

Plaintiffs were advised that under no circumstances did defendant union desire or would defendant accept any type of contract or agreement which would either expressly or by implication force plaintiffs' employees to designate defendant union or any organization or any individual as the bargaining agent of its employees or which would in any way compel plaintiffs' employees to become members of defendant union or any other organization.

Plaintiffs were further advised that unless plaintiffs agreed by some affirmative response by June 8, 1955, it would be understood that plaintiffs did not wish to meet to negotiate or adjust the differences between the parties.

Plaintiffs were further advised that in the event of negative response or no response that defendant union would then feel free to take whatever action that would protect the interest of its nembers, (sic) including publicizing the facts and picketing. A true and exact copy of such letter dated June 3, 1955, together with certification of Paul J. Weiss, Certified Public Accountant and list of requests to settle grievances and complaint, are attached hereto and

made a part hereof as fully as if set forth in their entirety herein.

Defendants further state that they did receive a certain letter dated June 8, 1955, signed by Jack Feinberg on behalf of Martinique Hotel setting forth that "Upon receipt of the names of the employees you claim to represent, together with trustworthy proof that said employees have designated your union to represent them, we shall communicate with you regarding this matter".

Defendants further state that such reply was not made in good faith in that the certification referred to above by a certified public accountant of the State of Florida had been previously sent and that a list of the names of the employees who are members of defendant union, was an unreasonable, arbitrary and capricious demand made solely for the purpose of assisting the plaintiffs in retaliatory discrimination against the said union member-employees.

[fol. 23] Defendants further state that such certification by a certified public accountant of the State of Florida is certainly trustworthy proof concerning the designation by its employees; and no other method has ever been suggested by plaintiffs.

Defendants further state that said letter of June 8, 1955, was not an affirmative response to the said letter of defendant union dated June 3, 1955, in that plaintiffs while demanding additional proof regarding the designation by their employees, did not agree or affirmatively state that they would negotiate provided such new demands were met. On the contrary, plaintiffs stated merely that if such demands were met, they would "communicate" with defendant union. It is obvious, therefore, that plaintiffs are continuing to "stall" and have adopted the hypocritical attitude that they doubt the union representation, notwithstanding the direct representations made to plaintiffs and the common knowledge of the entire community, of which this Court may now take judicial knowledge. Defendants deny each and every material allegation of Paragraph 7 not specifically admitted herein, as though each such allegation was herein set forth and separately and categorically denied.

8. Defendants admit the picketing alleged in Paragraph 8, the wording of the banners or placards and the date and deny the remaining material allegations, if any.

9. Defendants deny each and every material allegation of Paragraph 9 as though each allegation was herein set forth and severally and categorically denied.

10. Defendants deny each and every material allegation of Paragraph 10 as though each allegation was herein set forth and severally and categorically denied.

11. Defendants deny each and every material allegation of Paragraph 11 as though each allegation was herein set forth and severally and categorically denied.

12. Defendants deny each and every material allegation of Paragraph 12 as though each allegation was herein set forth and severally and categorically denied.

[fol. 24] 13. Defendants deny each and every allegation of Paragraph 13 as though each allegation was herein set forth and severally and categorically denied.

14. Defendants deny each and every material allegation of Paragraph 14 as though each allegation was herein set forth and severally and categorically denied.

15. Defendants deny each and every material allegation of Paragraph 15 as though each allegation was herein set forth and severally and categorically denied.

16. And your defendants would show that the plaintiff seeks to maintain this litigation in a court of equity and good conscience with unclean hands, for that the plaintiff has denied to its many employees the statutory and constitutional guarantees of representation and collective bargaining as afore set forth and are endeavoring to frustrate and to bring to naught the provisions of the aforesaid statutory constitutional clauses and enactments, contrary to equity and good conscience.

That your defendant union as the spokesman and representative of its members who are employed by plaintiff, has long sought to bring about negotiations and the plaintiff has failed and refused to respond to the invitations and

solicitations of this defendant union, acting on behalf of its members and that the picketing became necessary in order to appeal to the friends and sympathizers of the members of defendant union who are employed by plaintiff, as aforesaid; that in the utmost of good faith, your defendant union has invited plaintiff to hold an election by secret ballot under any fair and impartial authority and by such secret ballot, demonstrate to plaintiff the bona fides of defendant union's assertion concerning representation.

That plaintiff seeks to deprive these defendants and the members of defendant union of the constitutional guarantee of freedom of speech, as provided for in Article 1 and 14 Bill of Rights, Constitution of the United States of America and the similar provisions of the Declaration of Rights of the Constitution of the State of Florida, and the guarantee of Chapters 447.03 and 447.13 Laws of the State of Florida.

And defendants would respectfully show unto this Honorable Court that the allegations of the complaint and the [fol. 25] prayer for relief in said complaint predicated upon the allegations therein seek only to deprive your defendants of their constitutional guarantees of freedom of speech and to impose upon the individual members of the defendant union an involuntary servitude contrary to the provisions of the 1st, 13th and 14th Amendments of the Constitution of the United States of America. Granting the prayer of plaintiff's petition would result in abridging and depriving of these defendants and each and every member of defendant union and each and every person enjoined of his or her Constitutional right to speak freely his opinions and to communicate facts and to refrain from working individually or in concert with others, contrary to the aforesaid Constitutional provisions. Defendants further state that in the event the provisions of any Statute of the State of Florida are applied to the facts of this instant cause so as to grant the relief prayed for by the plaintiffs, the same would result in the denying to these plaintiffs, all members of the defendant union, and all other persons enjoined the guarantees of the Constitution of the United States and of the Constitution of the State of Florida, as aforesaid.

Wherefore, your defendant union prays this Honorable Court that should this Honorable Court desire to ascertain the fact of the representation by defendant union through the process of the Court, that a Commissioner be appointed to hold an election among the plaintiff's employees, to ascertain and report to this Honorable Court the truth and accuracy of the statements in plaintiff's petition as to the representation by defendant union of employees of plaintiffs and that this Honorable Court enter its Declaratory Decree, declaring this union to be in fact the duly authorized representative of the majority of plaintiff's employees within the jurisdiction of defendant union, and that upon judicial ascertainment and Declaratory Decree, that this Honorable Court by its mandatory injunction, require the plaintiff to negotiate and bargain in good faith with this union on behalf of the members of the union, who are the employees of plaintiff, as is contemplated by Chapter 447 of the Laws of the State of Florida, together with Section 12 of the Bill [fol. 26] of Rights, Constitution of the State of Florida and to deny the relief sought in the original complaint.

Gramling & Gramling, J. W. Brown, Ben Gettler, Solicitors for Defendants, By Carrington Gramling, 224 Shoreland Building, Miami, Florida.

Duly sworn to by Clarence L. Smith, jurat omitted in printing.

Certificate of service (omitted in printing).

[fol. 27]

COPY

ATTACHMENT TO ANSWER

CERTIFICATION

PAUL J. WEISS, being first duly sworn, deposes and states as follows:

The undersigned PAUL J. WEISS residing at 3720 Poinciana Avenue, Miami, Florida is a duly registered voter in Dade County, Florida and has resided in Dade County, Florida since 1923. PAUL J. WEISS is a certified public accountant, duly licensed by the State of Florida and has practiced the profession of accounting for more than 30 years.

The undersigned has at the request of Miami Hotel Employees Union, Local #255, examined the records of Local #255, to determine its claim that certain employees of your hotel, are members of Local #255 and have designated Local #255, as their collective bargaining agent. The examination of those records reveals that 59 of your employees are members of Local #255 and have duly designated Local #255 as their collective bargaining agent.

/s/ PAUL J. WEISS

Sworn to and subscribed before me this 3rd day of June, 1955.

/s/ J. M. SCHUTTER
Notary Public (Seal
My Commission Expires: Imprinted)

(Stamp)

Notary Public, State of Florida at large
My commission expires Oct. 9, 1957.
Bonded by American Surety Co. of N. Y.

Martinique

[fol. 28]

ATTACHMENT TO ANSWER

June 3, 1955

Mr. Jack Feinberg
Hotel Martinique
6423 Collins Ave.
Miami Beach, Fla.

This is to advise you that the Hotel Employees Union, Local #255, represents a substantial number of your employees. A certification by a Certified Public Accountant duly licensed by the State of Florida, certifying to that fact is enclosed herewith.

Those employees of yours who are represented by this local Union, have certain grievances and complaints. In order to settle those grievances and complaints, we are making certain requests of you, on their behalf. Those requests are contained in the document enclosed herewith, entitled "Requests to settle grievances and complaints."

Will you please meet with the undersigned representative to settle these grievances and complaints through negotiation and upon such settlement, to reduce such settlement to writing and duly execute the same.

In the event you desire, we will be willing to submit any or all of these complaints, grievances and requests to a mutually satisfactory arbitrator or if we are unable to agree to a mutually satisfactory arbitrator, to an arbitrator designated and selected by the American Arbitration Association, with both parties abiding by the rulings of such arbitrator.

Under no circumstances, do we desire or would we accept any type of contract or agreement which would either expressly or by implication force your employees to designate this Union or any organization or individual, as their bargaining agent, or which would in anyway compel your [fol. 29] employees to become members of this Union or any other organization.

Unless we hear from you in the affirmative by June 8, 1955 we shall understand that you do not wish to meet with us or to adjust these differences. We shall then feel free to take whatever action will protect the interest of our members, including publicizing the facts and picketing.

Very truly yours,

DAVID HERMAN
DIRECTOR OF ORGANIZATION
HOTEL EMPLOYEES UNION LOCAL #255

[fol. 30]

ATTACHMENT TO ANSWER

(Letterhead of Hotel Martinique, Miami Beach, Florida.)

June 7, 1955

Hotel Employees Union
Local 255
1575 Washington Avenue
Miami Beach, Florida

Attention: Mr. David Herman

Dear Sir:

Upon receipt of the names of the employees you claim to represent together with trustworthy proof that such employees have designated your union to represent them, we shall communicate with you regarding this matter.

Very truly yours,

/s/ JACK FINEBERG
Jack Fineberg

/s/ DAVID ROSS
David Ross

JF & DR/dg

[fol. 31]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY No. 180,445

[Title omitted]

AFFIDAVIT OF DAVID HERMAN

State of Florida,
County of Dade, ss.:

Before me, the undersigned authority, this day personally appeared David Herman, residing at The Eastview Hotel, Miami Beach, Florida, of full age, who, after being by me first duly sworn, upon his oath, deposes and says:

I am Director of Organization of Hotel Employees' Union, Local 255, and have been in this position since on or about February 15, 1955. During the course of my duties as Director of Organization I have received many complaints from employees of the Martinique Hotel concerning the deplorable wages and working conditions existing at the Hotel. These deplorable conditions included a 7-day week, 12-hour day, no compensation for overtime, no job security, low wages and many others. On the basis of the many conversations with employees of the Martinique Hotel, I know that there are approximately 75 regular, steady employees, excluding management and management-associated employees, working within the jurisdiction of Local No. 255. As a result of these conditions, approxi-
[fol. 32] mately 59 of the approximately 75 employees of the Martinique Hotel authorized Hotel Employees' Local No. 255 to represent them for the purpose of collective bargaining.

Thirteen (13) of said employees have signed application cards, have paid their initial fees and dues in full, and Union membership books have been issued to them. The applications of said 13 employees are attached to this affidavit and made a part hereof as fully as if set forth herein.

Approximately 20 additional employees of the Martinique Hotel have signed identical application cards and said application cards are being processed by defendant Union, and Union books have not as yet been issued.

Twenty-two (22) employees of the Martinique Hotel have signed white cards stating, "I hereby designate Hotel Employees Union, Local #255 as my collective bargaining agent. I request the Union to negotiate on my behalf with my employer on all matters dealing with wages, hours and conditions of employment." Said 22 cards are attached hereto and made a part hereof.

Thirty-three (33) additional employees of the Martinique Hotel have signed yellow cards, stating as follows: "I, ..., an employee of the Hotel Martinique do hereby designate the Miami Hotel Trades Council, consisting of affiliates of the American Federation of Labor with jurisdiction over the respective crafts unions and industrial unions in the hotels of Miami and Miami Beach, to be my duly authorized collective bargaining agent on all matters pertaining to my wages, hours and conditions of employment." Said 33 cards are herewith attached and [fol. 33] made a part hereof. The Miami Hotel Trades Council referred to therein includes the defendant Union, Hotel Employees' Union, Local #255, and a designation of said Miami Hotel Trades Council by an individual employee of the hotel working within the jurisdiction of Local 255 is a designation of Local 255 by such employee to represent him or her for the purpose of collective bargaining. Each of the persons who signed the said cards submitted herewith are working within the jurisdiction of Local No. 255.

As a Director of Organization for Local 255, I am in charge of keeping and have custody of all applications for membership referred to above, as well as all designation cards referred to above. The cards and applications attached hereto and made a part hereof are part of the official records of Local No. 255.

When I first assumed my duties as Director of Organization I learned from the records of Local 255, and by being advised by various spokesmen for the Miami Beach Hotel Association, that the Miami Beach Hotel Association rep-

resented this plaintiff-Hotel among others, for the purpose of labor relations and dealings with any labor organizations. After I assumed my duties as Director of Organization and up to the present date, I have been similarly advised by various hotel owners as to the truth of the aforesaid statement. I was further advised as to the representation of plaintiff-Hotel by the Miami Beach Hotel Association by my attorney, J. Carrington Gramling, who exhibited to me the ruling of the Honorable George E. Holt in Chancery Cause No. 121214 wherein Morris Lansburgh and the Miami Beach Hotel Owners Association were defendants, in which order the various hotels of Miami Beach, who were members of the Association, were enjoined, as [fol. 34] members of the Association from blacklisting and indulging in other unfair labor practices, which order judicially recognized Hotel Owners Association as a proper party for the purpose of enjoining its member hotels in labor matters, after the taking of testimony. The Miami Beach Hotel Owners Association referred to in said Case #121214 is the same and identical association referred to herein as Miami Beach Hotel Association.

I first contacted plaintiff by contacting their representative, the executive president of Miami Beach Hotel Association, Mr. Sam Rivkind, who was also the executive president of the Association at the time of the entry of the order by Honorable George E. Holt, against the Association, as aforesaid. Such contact was on March 3, 1955 by direct conversation with the said Mr. Rivkind. I discussed with Mr. Rivkind the desires of the employees of the various member hotels of the Association to be represented in all labor-employer relation matters by Local 255, and the desires of said employees to improve their wages, hours and working conditions. Mr. Rivkind advised me that he would discuss with the Board of Directors of the Hotel Association and the owners of the various hotels involved, including plaintiff herein, the advisability of a conference for the purpose of working out an orderly procedure whereby defendant Union would be able to establish its right to bargain collectively on behalf of its members employed in the various hotels, including plaintiff-hotel, based upon a secret ballot. Mr. Rivkind stated that he would endeavor to

bring about a meeting between myself and such other representatives of the Union as would be designated, and a representative committee from the Hotel Association.

[fol. 35] I next met with Mr. Rivkind on or about the 6th or 7th day of March, 1955. He advised me that he had revealed our previous conversation to a number of the members of the Miami Beach Hotel Association, including plaintiff; that he, however, was withdrawing from the executive presidency of the Association and that I should therefore continue any discussions with the President of the Association, Mr. Saul Cohen.

I met with Mr. Saul Cohen on March 20, 1955. We discussed the problem of the recognition by the Association of its members of Local 255 as the representative of Hotel Employees Union who had designated Local 255 as their collective bargaining agent. We further discussed the possibility of improving the working conditions and standards of said employees represented by Local No. 255, increasing their wages, reducing their hours, and other matters of that specific nature. There was no decision made at that conference.

I again met with Mr. Saul Cohen on March 23, 1955. We discussed the same general problems that were discussed in the meeting of March 20, 1955. I pointed out to Mr. Cohen the low wages, long hours and other unfavorable working conditions which existed in the various hotels, including plaintiff-hotel, and advised him that it was our purpose to endeavor to improve those conditions for the persons who were represented. It was generally agreed between us that the standards in said hotels, including plaintiff-hotel, were very low. We discussed the example pf (sic) representation of employees in New York City, whereby over a period of 17 years through a process of orderly collective bargaining conditions had been increased multifol (sic) since 1937. I pointed out to Mr. Cohen that [fol. 36] in New York City, although the hotel industry from the point of view of numbers of employees and number of rooms is equivalent to Miami Beach, that there has not been a serious strike, work stoppage or cessation of work in all of the time that the Union has been organized and that on the contrary, the hotel industry there was prosper-

ing simultaneously with the improvement of the conditions of the hotel employees. I also pointed out to Mr. Cohen that in every hotel where we claimed a majority, we would be willing and happy to go through an election to determine and establish that fact. I also advised him that in the event of disputes between Local No. 255 and the hotels, including plaintiff-hotel, we would be willing in each case to submit such dispute to an impartial arbitrator to be mutually agreed upon by both parties.

Mr. Cohen replied, "You know I can't disagree with anything you say and I wish we had hotel owners in Miami Beach. We have got pants pressers, dress makers, everything except hotel owners, and if I come to them with any kind of proposition like that, they will think I am crazy. They will think I am working for the Union instead of being the President of the Hotel Association."

Mr. Cohen requested that I write a letter to the Secretary of the Association asking for a meeting. In accordance with the aforesaid suggestion, I wrote such a letter on behalf of Local 255; a true and exact copy of that letter is attached hereto designated Exhibit ....., and made a part hereof.

I further advised Mr. Cohen, during the course of that conversation, that Local 255 represented a substantial number of employees of the hotels, including plaintiff-hotel; in fact I claimed that we represented a majority, which in [fol. 37] fact we do. My statements in regard to representation were not questioned in any way. On the contrary, such representations were accepted by him.

I did not receive a reply to the letter sent to the Association referred to above; therefore, on April 10, 1955, I had published, by paid advertising in each of the 3 major Miami newspapers, a copy of said letter. However, I have never received to this very day, any reply whatsoever to the said letter or to the said ad.

Starting on April 20, 1955 until June 3, 1955, I had at least one-half dozen or more conversations with Mr. Jack Fineberg, an officer and agent of plaintiff-corporation. Mr. Fineberg has signed the petition of plaintiff on behalf of plaintiff. The purpose of said conversations was to advise Mr. Fineberg that Local 255 represented a substan-

tial number, and in fact a majority, of the employees of plaintiff. I did so advise Mr. Fineberg and he admitted to me that that fact was true.

I also advised Mr. Fineberg that I desired to negotiate with him concerning representation in order to obtain recognition for Local 255 on behalf of its members employed by plaintiff and to improve the wages, hours and working conditions of said members. Mr. Fineberg replied that as much as he would like to recognize Local 255 and negotiate with it on behalf of its members employed at Hotel Martinique, that the Hotel Martinique was a member of the Miami Beach Hotel Association and he is unable to deviate from the policy that was adopted by the Hotel Association, which is to resist the Union and to refuse to recognize it in any way, notwithstanding that it represented employees, and to refuse to negotiate with Local 255 in any way.

[fol. 38] Finally, on June 3, 1955, on behalf of Local 255, I requested Mr. Paul J. Weis, a certified public accountant of the State of Florida, to examine the books and records of Local 255 to ascertain the number of employees of the Martinique Hotel which have designated Local 255 as their bargaining agent and who are members of Local No. 255. The said Paul J. Weis, certified public accountant, did, on the 3rd day of June, 1955, determine such facts and did certify that 40 employees of the Martinique Hotel were members of Local 255 and have designated Local 255 as their collective bargaining agent. Such certification was duly sworn to and certified before a Notary Public of the State of Florida; the original of said certification was delivered to Jack Fineberg on behalf of the Martinique Hotel on the 3rd day of June, 1955, together with the letter described in Paragraph 7 of Defendants' Answer herein. The letter and certification attached to the said Answer are exact copies of the letter and certification referred to; also, together with said letter I had delivered to Jack Fineberg, as officer of Hotel Martinique, Inc., a list of "requests to settle grievances and complaints"; an exact copy of such list is attached to the Answer. Said letter, certification and list are made a part of this affidavit as fully as if set forth herein.

On June 8, 1955, I received a certain letter signed by Jack Fineberg on behalf of the Martinique Hotel. The exact wording of that letter, together with statements in regard to that reply are set forth in Paragraphs 7, 8, 9 and 10 of Section 7 of defendants' Answer and are attached as a part of this affidavit, as fully as if set forth herein in their entirety, said statements being true statements.
[fol. 39] On the 8th day of June, 1955, picketing commenced at the Martinique Hotel for all of the reasons aforesaid. Said picketing has been entirely peaceful.

On the 25th day of May, 1955, a secret ballot election was held among all employees of the plaintiff-hotel working within the jurisdiction of Local 255, for the purpose of determining their desires as a representation and as to striking; said election was held under the supervision of an impartial person, not a member of the defendant-union, namely, Samuel J. Geison, who is a radio broadcaster over Radio WAHR and who is a col mnist for the Miami Beach publication, "Panorama". Fifty-three (53) employees of the Martinique Hotel working within the jurisdiction of Local 255, participated in that election and each one of the 53 employees voted in favor of representation by Local 255 and in favor of a strike. This is a substantial majority of the employees of the Martinique Hotel working within the jurisdiction of Local 255 and who would be affected by any strike, walk-out or cessation of work at plaintiff-hotel. Said ballots are attached hereto.

The plaintiff, in the operation of said hotel, is engaged in a business which affects interstate commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida, and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state buslines, interstate and international [fol. 40] steamship companies, and by passenger automobiles. Said business further is part of "package deal"

arrangements with said various inter-state and International airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Trans-World Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular & Occidental Steamship Company, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coast line Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus lines companies including Greyhound Bus Lines Company, Trailways Bus System and various other inter-state bus line companies. Said "package deal" arrangements are arrangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by plaintiff and said inter-state carriers. All expenses incurred in promoting, making and consummating said inter-state and international sales are jointly shared by plaintiff, and said interstate and international carriers. The proceeds of said inter-state and international sales are divided between plaintiff, as operator of said hotel and said interstate and international carriers.

Said plaintiff, as a part of the operation of said hotel, [fol. 41] purchases numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said plaintiff, as a part of the operation of said hotel, sells directly outside of the State of Florida and within the State of Florida for carriage or resale, outside of the State of Florida. Said plaintiff as part of the operation of said hotel, advertises the said hotel by newspapers, trade journals, magazines, radio, television, direct mail-

ings, distribution of pamphlets and literature and various other means in numerous of the states of the United States outside the State of Florida and in various countries outside of the United States.

Further affiant sayeth not.

/s/ David Herman

Sworn to and subscribed before me, this 16th day of June, A.D. 1955.

/s/ Sylvia R. Lathero, Notary Public State of Florida at Large, My commission expires August 20, 1955.

(Seal)

[fol. 43]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180445

[Title omitted]

PRELIMINARY INJUNCTION—June 17, 1955

Plaintiff's application for preliminary injunction came on for hearing before the court, after notice, on the sworn bill of complaint and affidavits filed by the plaintiff in support of the application, and the sworn answer of the defendants and counter-affidavits filed by the defendants in opposition to the application. Arguments of counsel for the respective parties were heard.

Whereupon, It Is Ordered that the application and prayer for a preliminary injunction is granted for the reason that it affirmatively appears from the pleadings filed in this court and the affidavits and counter-affidavits filed that the plaintiff did not refuse to negotiate with the defendants, but that the defendants failed to provide the plaintiff with substantial or satisfactory proof or evidence that would establish to the plaintiff that the defendants had been designated as the collective bargaining agent for the

plaintiff's employees. It further appears from the record in this cause that the defendants engaged in picketing for an illegal purpose, that of forcing the employees of the Martinique Hotel to designate the union or the individual defendants as their bargaining agent and to coerce the owners of the hotel, through economic sanction, to sign a contract with the union and to use said contract as a basis to compel the employees of the plaintiff hotel to become members of the defendant union.

[fol. 44] Accordingly, It Is Ordered as follows:

1. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from picketing or causing to be picketed the Martinique Hotel, its environs or approaches.

2. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from carrying or causing to be carried any signs, placards or propaganda of any nature, kind or description in front of the Martinique Hotel, its environs or approaches.

3. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from publishing or causing to be published any statements to the effect that a strike or lockout is in effect at the Martinique Hotel, or that the plaintiff refuses to negotiate or recognize the defendants as a collective bargaining agent of the employees of the Martinique Hotel.

4. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants be and they are hereby enjoined and restrained from molesting, interfering with, intimidating, coercing or directing any violence toward the plaintiff hotel, its property, its employees or servants.

5. The plaintiff shall file herein an injunction bond, payable to the defendants in the principal amount of $2,000.00, with good and sufficient surety to be approved by the Clerk of this Court, and conditioned as required by law, to pay all costs, damages and expenses which may be suffered by defendants by reason of the issuing of said injunction, if the injunction shall be dissolved or if the bill upon which it was granted be dismissed.

[fol. 45] 6. This order shall remain in force and effect pending this cause and until further order of this court.

Done and Ordered in chambers at Miami, Dade County, Florida, this 17 day of June, 1955.

Charles A. Carroll, Circuit Judge.

[fol. 46]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY NO. 180,445

[Title omitted]

SUPPLEMENTAL ANSWER—Filed June 28, 1955

Come Now the defendants and make this their Supplemental Answer and would respectfully show unto this Honorable Court that this Court is without jurisdiction to act in the cause for the reason that the plaintiffs in operation of said hotel are engaged in a business which affects inter-state commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state buslines, inter-state and international steamship companies and by passenger automobiles.

Said business further is part of "package deal" arrangements with said various inter-state and international airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Trans-World Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular & Occidental Steamship Company, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coast Line Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various [fol. 47] inter-state bus line companies including Greyhound Bus Line Company, Trailways Bus System and various other inter-state bus line companies. Said "package deal" arrangements are arrangements whereby persons in states other than the State of Florida and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said inter-state and international sales. The advertising and selling of the said "package" tours are done jointly by plaintiffs and said inter-state carriers. All expenses incurred in promoting, making and consummating said inter-state and international sales are jointly shared by plaintiffs and said inter-state and international carriers. The proceeds of said inter-state and international sales are divided between plaintiffs as operator of said hotel and said inter-state and international carriers.

Said plaintiffs, as a part of the operation of said hotel, purchase numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said plaintiffs as a part of the operation of said hotel sell directly outside of the State of Florida and within the State of Florida for carriage or resale outside of the State of Florida.

Said plaintiffs as part of the operation of said hotel advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution

of pamphlets and literature and various other means in numerous of the states of the United States outside of the State of Florida and in various countries outside of the United States.

Plaintiffs as part of the operation of said hotel have on said premises various shops and services engaged in inter-state commerce including Western Union Telegraph services, numerous travel agencies, transportation offices for airlines, steamship lines, railroad companies and bus lines, inter-state stock exchange branches, inter-state chain drug stores, inter-state clothing stores and other inter-state retail stores.

Defendants further state that said hotel is part of a multi-state chain, said entire chain being engaged in inter-state commerce, so that labor disputes at plaintiffs' hotel affects inter-state commerce.

Defendants further state that the Congress of the United States has by legislative enactment under the Constitution of the United States, occupied the fields as to all matters complained of in the petition of plaintiffs and this State [fol. 48] Court has no jurisdiction to act in the premises wherefore the said cause should be dismissed for lack of jurisdiction.

Gramling & Gramling, J. W. Brown, Ben Gettler,
By Carrington Gramling, 224 Shoreland Building,
Miami, Florida, Solicitors for Defendants.

Certificate of service (omitted in printing).

[fol. 49]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180445

[Title omitted]

STIPULATION IN RE FINAL HEARING—
Filed December 23, 1955

It Is Stipulated by and between counsel for the respective parties that for the purposes of final hearing each would

produce as witnesses the several affiants who have heretofore made Affidavits in this cause and that the respective witnesses would testify according to their respective affidavits; that cross examination is waived and it is

Stipulated that final decree be entered by the Chancellor upon the record as now made in the light of this Stipulation.

Witness our hands at Miami, Dade County, Florida this 18th day of November, 1955.

Anderson & Nadeau, Attorneys for Plaintiff, By Thomas H. Anderson.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By Carrington Gramling.

[fol. 50]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY NO. 180445

MARTINIQUE HOTEL, INC., A Florida Corporation, Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL #255, (A. F. of L.) et al., Defendants.

FINAL DECREE—December 23, 1955

This Cause coming on to be heard upon final hearing pursuant to the Stipulation of the parties to this cause, and the Court being fully advised in the premises,

It Is Thereupon Ordered, Adjudged and Decreed that the restraining order heretofore rendered against the defendants, and each of them, which order is recorded in Chancery Order Book 1189, Page 525, in the records of the Clerk of the Circuit Court of Dade County, Florida, be and the same is hereby made permanent. The injunction bond filed herein is hereby cancelled and the principal and

surety released of all liability thereunder. The costs of this cause hereby assessed in the sum of $20.07 are taxed against the defendants, for which let execution issue.

Done and Ordered in Chambers, Miami, Florida, this 23rd day of December, 1955.

/s/ Charles A. Carroll, Circuit Judge.

[fol. 51]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180445

[Title omitted]

NOTICE OF APPEAL—Filed January 4, 1956

The defendants, Hotel Employees Union, Local No. 255, et al., take and enter their appeal to the Supreme Court of Florida to review the order, judgment or decree of the Circuit Court for Dade County, bearing date the 23 day of December, 1955, entered in the above styled cause and recorded in the records of said Court in Book 1217, Page 538, and all parties to said cause are called upon to take notice of the entry of this appeal.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By Carrington Gramling.

[fol. 52]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY No. 180,445

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 13, 1956

Come now the defendants by their undersigned solicitors and make the following assignments of error as the errors which they intend to rely upon in the Supreme Court of Florida, for a reversal of the Order (or Final Decree)

made herein on the 6th day of January, 1955, and recorded in Chancery Order Book 1217, page 538 of the records of this Court, from which they appealed:

1. The Court erred in enjoining the defendants in peaceful picketing the business place of the complainant, whereby your defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly, and the right to work or refrain from working as guaranteed within the meaning and scope of Sections I, XII, XIII, XVII, and XIX, Declaration of Rights, Constitution of the State of Florida, and Amendments I, V, XIII and XIV of the Constitution of the United States of America.

2. The Court erred (in and by such final decree) in finding that the defendant should have established to the satisfaction of the employer, that the employees had chosen defendant Union as their representative and further requiring that the labor organization must also inform the employer of the object to be accomplished by picketing and [fol. 53] afford an unwilling or hostile employer an unspecified waiting period within which to engage in negotiations, all as a prerequisite to the right to strike and picket, whereby your defendants and the Union members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments I, V, XII and XIV of the Constitution of the United States of America.

3. The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

5. The Court erred (in and by such final decree) in enjoining peaceful picketing and the dissemination of information predicated upon an unsubstantiated finding of fact, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

6. The Court erred in requiring a direct employer-employee relationship as a prerequisite to picketing and as a prerequisite to publicizing the existence of a labor dispute, contrary to Amendments I and XIV of the Constitution of the United States of America.

7. The Court erred (in and by such final decree) in permanently enjoining peaceful picketing and the publicizing of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefor, and beyond the scope of any finding of fact insubstantial [fol. 54] or otherwise, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

8. The Court erred (in and by such final decree) in applying the statute of Florida (F. S. A. 447.09) declaring it to be unlawful to participate in any strike, walkout, cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby * * * to conduct any election referred to in Subsection 3 of this section without a secret ballot, forasmuch as said statute deprives the individual members of this Union of the Constitutional privileges guaranteed to them by Amendments I, V, XIII and XIV of the Constitution of the United States.

9. The Court erred (in and by said final decree) in assessing costs against the defendants.

J. W. Brown, Gramling and Gramling, Solicitors for Defendants, By Carrington Gramling.

[fol. 55]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,445

[Title omitted]

STIPULATION RE RECORD—Filed February 27, 1956

It Is Stipulated by and between solicitors for the respective parties that the Record on Appeal in the above entitled cause shall consist of the following:

Date of Filing	*Kind of Instrument*
June 10, 1955	Bill of Complaint
February , 1956	Affidavits
June 16, 1955	Answer of Defendants Certification, Letters, Affidavits and Exhibits Attached as Part of Answer
June 17, 1955	Preliminary Injunction recorded in Chancery Order Book 1189 page 525
June 28, 1955	Supplemental Answer
November 18, 1955	Stipulation In Re Final Hearing (Filed Dec. 23rd 1955
	Final Decree recorded in Chancery Order Book 1217 page 538
January 4, 1956	Notice of Appeal
January 13, 1956	Assignments of Error

[fol. 56]

January , 1956	This Stipulation
January , 1956	All Exhibits

Witness our hands at Miami, Dade County, Florida this 23rd day of February, 1956.

Anderson & Nadeau, Attorneys for Plaintiff, By /s/ Herbert L. Nadeau.

J. W. Brown and Gramling & Gramling, Attorneys for Defendants, By Carrington Gramling.

[fol. 57] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 59]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957 DIVISION B.

Case No. 28,252

HOTEL EMPLOYEES UNION, LOCAL No. 255 (A. F. of L.), et al., Appellants,

v.

MARTINIQUE HOTEL, INC., a Florida corporation, Appellee.

An Appeal from the Circuit Court for Dade County, Charles A. Carroll, Judge.

J. W. Brown and Gramling & Gramling, for Appellants.

Sibley & Davis and Thomas H. Barkdull, Jr., for Appellee.

OPINION, PER CURIAM—Filed March 15, 1957

Affirmed on authority of Fontainebleau Hotel Corp. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., Opinion filed February 1, 1957.

Terrell, C.J., Hobson, Drew and O'Connell, JJ., Concur.

[fol. 61]

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957 DIVISION B.

Case No. 28,252

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., Appellants,

v.

MARTINIQUE HOTEL, INC., a Florida corporation, Appellee.

JUDGMENT—March 15, 1957

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellees do have and recover of and from the Appellants their costs by them in this behalf expended, which costs are taxed in the sum of $....., all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared was this day ordered to be filed.

[fol. 63]

IN THE SUPREME COURT OF FLORIDA

Book 1285 Page 80

MANDATE FROM SUPREME COURT OF FLORIDA—April 1, 1957

180445

To the Honorable, the Judges of the Circuit Court for the Eleventh Judicial Circuit of Florida. Greeting:

Whereas, Lately in the Circuit Court of the Eleventh Judicial Circuit, in and for the County of Dade in a cause wherein

---

Martinique Hotel, Inc., a Florida corporation, was plaintiff

and

Hotel Employees Union, Local No. 255 (A.F.ofL.), et al, were defendants

---

(Circuit Court #180445—Chancery)

the Decree of said Circuit Court was rendered Dec. 23, 1955 as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

And Whereas, at the January Term of said Supreme Court holden at Tallahassee, A. D. 1957, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 15th day March A. D. 1957. the said Supreme Court rendered its opinion and judgment in said cause as per copy thereof hereto attached and made a part hereof.

In Consideration Whereof, It Is Ordered by the Court that the Appellee do have and recover of and from the

Appellants costs in this behalf expended herein taxed except the $12.00 filing fee which has been paid by the Appellants, and that all other costs shall be taxed in the court in which the appeal was entered, therefore,

You Are Hereby Commanded, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Decree of the Circuit Court notwithstanding.

Witness, The Honorable Glenn Terrell Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 1st day of April 1957.

/s/ Gwyte P. McCord,
Clerk Supreme Court of Florida.

(Seal)

Filed this 2 day of April A. D. 1957
recorded this 4 day of Apr A. D. 1957
in Chancery Order Book 1285 on
Page 80

E. B. Leatherman,
Clerk Circuit Court

By (Signature Illegible)

[fol. 69] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 70]

SUPREME COURT OF THE UNITED STATES

October Term, 1956.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., Petitioners,

v.

SAX ENTERPRISES, INC.,
(and Twelve Associated Cases Enumerated in Application For Extension).

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—June 11, 1957

Upon Consideration of the application of counsel for petitioners,

It Is Ordered that the time for filing petition or petitions for writ or writs of certiorari in the above-entitled causes be, and the same is hereby, extended to and including August 12th, 1957.

/s/ Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 11th day of June, 1957.

[fol. 71]

SUPREME COURT OF THE UNITED STATES

NOS. 363 and 364, OCTOBER TERM, 1957

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., Petitioners,

v.

SAX ENTERPRISES, INC.; LEEVLANS CORPORATION; R. S. LEVY, DANIEL LIFTER and J. S. LANSBURGH, as Trustee; et al.; and HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., Petitioners,

v.

HARRY LEVY, et al., Doing Business as Sherry Frontenac Hotel, Stuyvesant Corporation, Abe Allenberg, et al.

ORDER ALLOWING CERTIORARI—December 16, 1957

The petitions herein for writs of certiorari to the Supreme Court of the State of Florida are granted. The cases are consolidated and a total of two hours allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT, U. S.

Supplemental
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 5

HOTEL EMPLOYEES UNION, LOCAL NO. 255, ET AL., PETITIONERS,

vs.

SAX ENTERPRISES, INC.; LEEVLANS CORPORATION; R. S. LEVY, DANIEL LIFTER AND J. S. LANSBURGH, AS TRUSTEE; ET AL.

No. 6

HOTEL EMPLOYEES UNION, LOCAL NO. 255, ET AL., PETITIONERS,

vs.

HARRY LEVY, ET AL., DOING BUSINESS AS SHERRY FRONTENAC HOTEL, STUYVESANT CORPORATION, ABE ALLENBERG, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

NO. 5 PETITION FOR CERTIORARI FILED AUGUST 12, 1957
NO. 6 PETITION FOR CERTIORARI FILED AUGUST 12, 1957
CERTIORARI GRANTED DECEMBER 16, 1957

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 5

HOTEL EMPLOYEES UNION, LOCAL NO. 255, ET AL., PETITIONERS,

vs.

SAX ENTERPRISES, INC.; LEEVLANS CORPORATION; R. S. LEVY, DANIEL LIFTER AND J. S. LANSBURGH, AS TRUSTEE; ET AL.

No. 6

HOTEL EMPLOYEES UNION, LOCAL NO. 255, ET AL., PETITIONERS,

vs.

HARRY LEVY, ET AL., DOING BUSINESS AS SHERRY FRONTENAC HOTEL, STUYVESANT CORPORATION, ABE ALLENBERG, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Testimony of Armando Perez—		
cross	111	1155
Eileen Rogan—		
direct	125	1163
cross	130	1166
Arlene Wilson—		
direct	131	1166
Peter Pappas—		
direct	133	1168
cross	137	1170
redirect	141	1173

	Original	Print
Record from the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida in Case No. 178554 (Saxony)—Continued		
Transcript of hearing on application for a preliminary injunction, April 28, 29 and 30, 1955—Continued		
Testimony of Herbert Bullard—		
direct	143	1174
cross	144	1175
Joffre Nassour—		
direct	147	1177
cross	154	1181
Colloquy between court and counsel	164	1187
Testimony of Jerry Wittels—		
direct	171	1191
cross	177	1195
Dennis Byrd—		
direct	180	1197
cross	182	1198
Vera Luck—		
direct	188	1202
cross	189	1203
Ernest Davis—		
direct	194	1205
cross	201	1210
redirect	203	1211
Jane Perez—		
direct	203	1211
cross	207	1214
Ruth Knell—		
direct	209	1215
cross	211	1217
Hans Knell—		
direct	213	1218
cross	216	1220
Preston A. Thall—		
direct	219	1222
Jerry Kedrierski—		
direct	226	1226
cross	236	1232

	Original	Print
Record from the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida in Case No. 178554 (Saxony)—Continued		
Transcript of hearing on application for a preliminary injunction, April 28, 29 and 30, 1955—Continued		
Testimony of Roger Wolters—		
direct	237	1233
cross	240	1235
redirect	241	1236
Trevor Scott—		
direct	242	1236
cross	246	1239
Val Turner—		
direct	251	1242
Marguerite Gale—		
direct	253	1243
Frank Short—		
direct	258	1246
cross	260	1248
Patricia Fitzgerald—		
direct	262	1249
cross	265	1251
Ralph McIntyre—		
direct	270	1254
cross	273	1255
redirect	277	1258
Louis Kenin—		
direct	279	1259
cross	280	1260
redirect	284	1263
Ralph E. Snider—		
direct	284	1263
cross	293	1269
redirect	309	1278
Richard Dolan—		
direct	310	1279
cross	318	1284
redirect	321	1285
Morris Lansburgh—		
direct	323	1287

	Original	Print
Record from the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida in Case No. 178558 (Saxony)—Continued		
Transcript of hearing on application for a preliminary injunction, April 28, 29 and 30, 1955—Continued		
Testimony of Benjamin G. Kline—		
direct	330	1292
cross	332	1293
Murray Friedman—		
direct	332	1293
Bernard Resnick—		
direct	333	1294
cross	334	1295
redirect	335	1295
Plaintiff rests	336	1296

* * * * * * *

[fol. 18] Mr. Gramling: So far as the evidence may be applicable in all nine cases, why, we concur. We do feel, however, that we raised a question where a group of jurors who sit and listen to testimony involving alleged acts that have no bearing whatsoever upon the case pending before that particular chancellor, and we feel that so far as that is concerned, in fairness to our clients, that perhaps each chancellor should hear, separately, that portion of the testimony which pertains only to his case, otherwise the result is that each chancellor is not going to listen to that which is none of his business; but, secondly, he is going to have a cumulative effect of whatever allegations are made by opposing counsel.

We feel, of course, there is nothing for us to hide in the matter, and we do not mind your listening to that which pertains to other cases, but we would, frankly, for the record, like to reserve that point.

Judge Carroll: I understand, when this hearing was arranged, it was agreed that the judges would sit here as a matter of convenience, so we would not have to go through——

Mr. Gramling: That is on Mr. Sibley's assertion, and that probably, as I have heard it quoted, about 97 per cent of this is all going to be in common throughout the nine cases; is that correct?

[fol. 19] Mr. Sibley: I do not recall saying 97 per cent, but a large percentage of the evidence will be applicable to all the cases; not only that, but we think that there will be a legal question involved in which it may be determined that all the evidence is applicable to all the cases, but I think you are entitled to reserve a point on that.

Judge Carroll: Mr. Gramling, I think the judges will be able to keep separate the evidence as to the separate cases. Do you have an objection to that?

Mr. Gramling: Bear with me a moment. Sir, we would request, in the matter, only that opposing counsel announce and make it specific and clear what testimony he is producing or endeavoring to produce, which applies to only one hotel, and then make it quite specific as to which one of the nine hotels he is referring to.

Judge Carroll: I think it is possible to do that. We are here and it will be general to the extent that it is general; and to the extent that it may be specific, relating to only one case, it will be designated as such. Can you do that?

Mr. Sibley: It is agreeable.

Judge Carroll: Does counsel want to make an opening statement as to what the situation is?

Mr. Warren: May it please your Honor, before making an opening statement, on behalf of the defendant and cer-
[fol. 20] tain would-be intervenors, we respectfully request permission to file and to argue two motions and one petition—one of the motions being a motion to strike; and another motion being a motion to join additional parties-defendant; and the petition being a petition for leave to intervene.

If Your Honors will permit the filing of those two motions and the petition, we respectfully request permission to argue the motions and the petition before we make an opening statement, if it please the Court.

Judge Carroll: Well, in what case is that?

Mr. Warren: They are in all cases.

Judge Carroll: Who are you seeking to intervene for?

Mr. Warren: Individual former employees that we are seeking to intervene, of some of the plaintiffs.

They feel, as is set out, Your Honor, that their rights will have to be preserved by being individual parties to this suit.

Judge Carroll: They want to intervene as defendants?

Mr. Warren: Yes, sir; that is right, and then we seek, in a further petition, to bring the Miami Beach Hotel Association in as a defendant, too, for reason set out in the petition.

Judge Carroll: Any objection?

[fol. 21] Mr. Sibley: I object, Your Honor, to making the Miami Beach Hotel Owners Association a party to this suit, because I do not see that they have any interest in the litigation. If they want to make themselves defendants in the suit, they say the Miami Beach Hotel Owners Association is aiding the plaintiffs in procuring help after the strike has been called by the Union, and I do not see where the Miami Beach Hotel Owners Association in any

wise should become a party-defendant to the cause. We seek no relief from them.

Mr. Warren: Your Honors, I believe the petition goes a little further than that. Would you hear from Mr. Gramling on it, if you please.

Judge Carroll: I think what we will do is, we will reserve ruling on these, and we will proceed, and let it be filed, and reserve ruling on them.

If you wish to address the Court on behalf of the intervenors, you can do so, but I think, maybe, the main counsel shall proceed, first.

Mr. Warren: May I say this, Your Honor. We would be embarrassed and handicapped and, I believe, prejudiced if we were required to go into the main issues without having had the motion to strike determined.

So, if Your Honors would permit us to dispose of that at this time and reserve ruling on the other, I do not think it would prejudice or handicap us to any great extent; but if we might get that disposed of, I believe it would put us [fol. 22] in a much better position to make a proper defense of this matter, because, as the complaint now stands, it has matter in there that puts us at a disadvantage unless it is stricken, and we earnestly feel, Your Honors, that it should be stricken.

I do not want to argue the point at this time, but some of it is so derogatory and demagogic and degrading, that it might be tolerated in a political campaign, but it does not belong in a Court of conscience, and the language in there appears to be deliberately inflammatory; and I say that, in spite of the fact that I have very high personal regard for Colonel Sibley and all of his partners, and a high professional regard for him; but this complaint they filed, may it please Your Honors, reeks with language that ought not be directed at a civil defendant.

If you found it in a criminal indictment, it might be subject to a motion to strike, but it has language in it that ought to go out, if I may say so, without arguing the merits, Your Honor.

It charges them with being—these defendants, some of the people, with being "carpet-baggers". That is an inflammatory word—a word that has no place here. It is an epithet.

(Informal discussion off the record.)

[fol. 23] Judge Carroll: I hate to interrupt you, Governor, but this motion that you are presenting is on behalf of intervenors. I think it is appropriate for you to make it, perhaps, at some other time.

This hearing was set for application for a preliminary injunction, and as an intervenor, your position must be subordinate to the main case.

We have these people here, and the matter is set, and we are going to take your motion under advisement, and you will have an opportunity to argue it later, but we are going to proceed, and let the plaintiff proceed with his application for injunction without——

Mr. Warren: If you pardon me, I believe I didn't make my position clear. The motion to strike is not on behalf of intervenors. It is on behalf of the named defendant—the defendant.

Judge Carroll: I thought the intervenors——

Mr. Warren: No, sir; it is on behalf of the defendants who were brought into Court. I want to make that plain, by persons who are here today, and have to defend themselves. That motion is on their behalf. The other matters——

Judge Carroll: I do not think the motion goes to the sufficiency of the suit. I think the proceedings—we have a limited time, and we want to get this matter heard, and I suggest that plaintiff's counsel proceed with his statement.

[fol. 24] Mr. Gramling: If Your Honors please, would you be so patient a moment, please, sirs, just a scanning of your paragraph No. 4, in each one of the cases, would show you that in no fashion should we be put to proof to any of the allegations therein contained.

The entire thing is, as he stated, demagogic; nothing to which we should respond or be charged with.

Also, for the purpose of this hearing, a portion of it—pardon me, sir—a portion of paragraph 2, everything following the first sentence, has no bearing on the issues of this case.

And now, sir, if you will direct your attention also to paragraph No. 6, on page 6 of the complaint, you will find a portion that says this:

"That this conduct of the defendant union is unlawful and is contrary to the constitution and laws of the State of Florida in that the said defendant union has never been certified to the plaintiffs that it is the lawful bargaining agent of the plaintiffs' employees."

Now, gentlemen, there is no law in the sovereign State of Florida bearing upon that point or requiring such certification or even providing for certification.

We are charged with unlawful picketing, because we did not do that for which there is no requirement in law. We feel that should be deleted. At least, as we proceed with [fol. 25] the trial, we find ourselves attempting to prove or disprove a point that is absolutely inconsequential.

Judge Carroll: Mr. Gramling, the ruling is the same as to you. We will defer ruling on that and reserve ruling on it and let the plaintiff proceed.

Mr. Sibley, we will hear from you.

(Mr. Sibley thereupon made an opening statement to the Court.)

(Thereupon Mr. Brown made an opening statement to the Court.)

Judge Carroll: We will proceed on the basis outlined by the Court.

Mr. Sibley: All right. Mr. J. W. Brown, will you take the stand, please.

Thereupon—J. W. Brown was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your full name, sir.

A. J. W. Brown.

Q. Where do you reside?

A. I reside in Cincinnati, Ohio.

[fol. 26] Q. Are you General Counsel for an international union?

A. Yes, I am. I am General Counsel for the Hotel and Restaurant Employees and Bartenders International Union.

Q. Local 255 is part of that Union, of that International?

A. Yes, it is.

Q. Who is the president of that Union?

A. Mr. Ed S. Miller.

Mr. Gramling: Is that of the International, or of 255?

Mr. Sibley: I asked him if Local 255 was a part of the International, and he said it was.

Judge Carroll: Mr. Sibley, what do you purpose (sic) to show by this witness that has a bearing on your application for injunction?

Mr. Sibley: If Your Honors please, I am going to hand him something right now that I think has something to do with it.

Mr. Warren: Your Honor, we suggest he ought to make a disclosure of it. If it is a communication between attorney and client, it is privileged.

Judge Carroll: What I have in mind is this, Mr. Sibley. I do not think we should go into all of the background and [fol. 27] issues on this case.

Mr. Sibley: Your Honor, I have not the slightest intention of doing that, but I had to get my preliminary questions in order to proceed with my proof.

Judge Carroll: Go ahead, Mr. Sibley.

By Mr. Sibley:

Q. Mr. Brown, did Mr. Miller cause this advertisement to appear in the Cincinnati paper, did he not?

A. I would not have the slightest idea.

Q. He did not submit to you that advertisement in the Cincinnati Inquirer?

A. No; he did not.

Mr. Gramling: I object to this line of questioning as to whether or not a client of his ever contacted him and solicited his professional opinion.

Judge Carroll: Objection overruled.

Mr. Sibley: We ask that it be marked for identification, if Your Honors please.

Judge Carroll: Are you offering it in evidence, or just for identification?

Mr. Sibley: The witness said he does not know anything about it, so I suppose, under those circumstances, it will have to be marked for identification.

[fol. 28] The Clerk: Plaintiff's Exhibit 1-A for identification.

(The document referred to was thereupon marked Plaintiff's Exhibit 1-A for identification.)

By Mr. Sibley:

Q. Mr. Brown, do you know anything about this advertisement that appeared in the St. Louis paper, in reference to a Miami Beach Hotel?

Mr. Warren: We object to that as too general and too vague and too indefinite.

Judge Carroll: Overruled.

The Witness: I have no knowledge of this, and I have never seen it before.

Mr. Sibley: Mark it for identification.

The Clerk: Plaintiff's Exhibit 1-B for identification.

(The document referred to was thereupon marked Plaintiff's Exhibit 1-B for identification.)

By Mr. Sibley:

Q. Edward S. Miller is the general president of the International?

A. Yes.

Q. And the name of the International is the International Hotel Restaurant Employees and Bartenders International Union, A.F. of L.?

A. That is correct.

Mr. Sibley: That is all, Mr. Brown.

Judge Carroll: Any cross examination?

[fol. 29] Mr. Warren: No, sir.

Mr. Gramling: No cross.

(Witness excused.)

Mr. Sibley: Mr. David Herman will be the next witness. We are calling him under Rule 1.37.

Thereupon—DAVID HERMAN was called as a witness on behalf of the plaintiffs, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. State your name——

Mr. Gramling: Pardon me a second. Because of the circumstances of this witness being literally on cross examination, I request your Honor to instruct this witness, that in case he is asked a question, after giving a specific answer, that if he feels it is necessary, that he will be accorded the courtesy of explaining his answer. May the witness be so instructed.

Judge Floyd: He has that right.

Mr. Gramling: He may not know it.

Judge Cannon: He knows it.

Judge Carroll: You instruct him.

By Mr. Sibley:

Q. Please state your full name.

[fol. 30] A. My name is David Herman.

Q. Where do you reside, Mr. Herman?

A. At the moment?

Q. No; I mean, where is your residence; where do you live? Where is your legal residence?

A. Well, I have a residence here on Miami Beach, and I have a residence in Long Island City, New York.

Q. How long have you been a resident of Miami Beach?

Mr. Warren: Your Honor, I object to that. It makes no difference how long or how short he has been here.

Mr. Sibley: I concede that. I am only trying to get some preliminary questions.

Mr. Warren: I object to this melodramatic and theatrical display.

Judge Carroll: Overruled.

By Mr. Sibley:

Q. Will you tell us how long you have been a resident?

A. I lived here since around the latter part of January, about January of 1955.

Q. And you are the president of a union in New York; is that correct?

A. Yes. I am the president on leave of absence of Local 6, Hotel and Club Employees Union in New York.

[fol. 31] Q. Is the name of your union the Hotel and Club Employees Union No. 6, A.F. of L.?

A. Yes.

Q. Is your union, in New York, a part of the Hotel and Restaurant Employees and Bartenders International Union, A.F. of L.?

A. Yes, sir. It is one of the 800 local unions.

Q. I believe you say you are now on leave from your union.

A. Yes, sir.

Q. Who sent you here, sir, if anyone?

A. I do not think "sent" is the word. I was asked if I would like to come down here.

Q. By whom, sir?

A. By the hotel employees of Miami Beach, and by my international president, and by some of my associates in New York.

Q. Mr. Miller is the president of your International?

A. Among others; he suggested it, yes, sir.

Q. Do you keep a file of publicity in several papers in the United States, with reference to the Miami Beach difficulties at the present time?

A. I have received some clippings from out of town papers. I do not think that I have a file. I have two or [fol. 32] three clippings from two or three out of town newspapers.

Q. Did you see this one, sir, from the St. Louis Globe?

A. No, sir; I did not.

Q. Did you see this one, sir, from the Cincinnati paper?

A. No, sir; I did not.

Q. Were you sent clippings from your own local in New York?

A. Yes, sir. I have seen the ones in the New York Times and the World Telegram.

Q. Those are advertisements that your local—the one you are president of, carried in connection with the dispute on Miami Beach; is that correct?

A. Well, technically not; but generally you are correct; because, technically, they were placed by the New York Hotel Trade Council, and I think in one case by Local 6; yes.

Q. In one case, your local?

A. I think so; yes, sir.

Q. Aren't they influencing the public up there, even though——

Mr. Gramling: Your Honors, I object, now, to this line of questioning, because you have ruled that you want to hear something that has some direct bearing on whether [fol. 33] or not Mr. Sibley is entitled to an injunction.

I cannot, for the life of me, see what advertisements all over the United States of America have to do—otherwise we are going to come and ask you to please look at some advertisements the hotel owners have been putting in all over the United States and Canada. What bearing does that have?

Mr. Sibley: If my friend will consent to the two to go in that I have proffered, the Court will immediately see the purpose.

Judge Carroll: If not, you can move to strike it.

Mr. Warren: I object to it, on the further ground that no predicate is laid for it in the complaint, Your Honor; and on the further ground that it appears to be a subtle and also a sneak attack upon advertisements, themselves.

Judge Carroll: Overruled.

By Mr. Sibley:

Q. Is this the advertisement that your union, of which you are president, put in the New York paper?

A. It would seem to say so, yes, sir. I was not there. I do not know if this was.

[fol. 34] Q. You received a copy, I believe you said.

A. I have seen it, and I have got a copy. This is in the World Telegram and the Sun of Friday, April 22nd. It

bears the name and the signature of some of the officers of my local union, and I have no reason to doubt that they did that up there while I was down here.

Q. They sent you a copy of it?

A. No; they did not. Somebody else sent me a copy. It came anonymously in the mail.

OFFERS IN EVIDENCE

Mr. Sibley: We tender in evidence the advertisement that has been identified by the witness, and ask that it be marked. I tender it as Plaintiff's Exhibit No. 1 in each of the nine cases.

Mr. Brown: We object.

Mr. Warren: Your Honor, we object on these grounds severally and on general grounds:

1—it has not been proved that anybody named as a defendant here had any part in presenting that advertisement; and

2—it is not shown that the advertisement in any way could have caused any injury that they allege in the complaint; and

3—advertising is one of the most recognized and acknowledged forms of expression of free speech and guaranteed [fol. 35] by the Constitution; and

4—it occurred completely beyond the jurisdiction of this Court; and even if the advertising, which I have not seen, was of inflammatory nature as portions of plaintiff's complaint are, it could not necessarily and logically have caused any damage to the plaintiffs down here.

It might be that a reading of it might change that position, but I wish to offer those specific objections.

Judge Carroll: Objection overruled. File it.

(The document referred to was thereupon marked Plaintiff's Exhibit No. 1.)

By Mr. Sibley:

Q. Sir, are you a member of or affiliated with the New York Hotel Trades Council, A.F. of L.?

A. Yes, sir.

Q. What is your position with the New York Hotel Trades Council?

A. I occupy the position of one of ten vice presidents, and by virtue of my membership in Local No. 6, I am also a member of the New York Hotel Trades Council. It is the collective bargaining agency for ten local unions in [fol. 36] New York City.

Q. Is the collective bargaining agent for your local No. 6?

A. With the hotels, yes, sir; with the clubs, no, sir.

Q. And it is an A.F. of L. instrumentality or affiliate of some kind?

A. It is a central body of A.F. of L. unions, belonging to nine different international organizations—nationally and internationally.

Q. I believe you said you saw, in the New York Times, the advertisement that was being run by——

A. Yes.

Q. That is the one that you have seen?

A. Either this one or one like it, generally. That was about the contents.

Mr. Sibley: We tender in evidence the issue of the New York Times, April 20th, advertising identified by the witness.

Mr. Warren: We object to that, on the grounds that it is not properly certified, Your Honor.

If you will hear me on that, I would appreciate it very much. He seeks to put into evidence an uncertified piece of printing here. As I understand it, the laws of Florida re- [fol. 37] quire that when you produce even a legal document, a document of record from another state, you must have it certified, and then you must have some officer certify that the certifier is qualified to certify.

I believe that is the procedure in introducing into evidence foreign documents Counsel, himself, claims that these documents come from another jurisdiction. I do not like that word. No place in the United States is foreign, in my conception.

(Off the record.)

The Court: Counsel is correct in his statement as to the rule relating to documents where the question of authenticity of a document is involved.

In view, however, of the witness' statement that this is what appeared, objection overruled and it will be filed.

The Clerk: Plaintiff's Exhibit No. 2.

(The document referred to was thereupon marked Plaintiff's Exhibit No. 2.)

By Mr. Sibley:

Q. Mr. Herman, did you have or did you supervise the insertion of this statement in the two Miami papers, the Miami Herald and the Miami Daily News and the Miami Beach Sun?

[fol. 38] A. Yes, sir.

Q. And that is the advertisement that your local union here put in, Local No. 255?

A. This, sir, is a reprint of two telegrams that our local union received from the office, President George Meany of the American Federation of Labor and President Walter Reuther of the C.I.O., and we caused them to be publicized to the general public as a matter of public information.

Mr. Sibley: We tender in evidence as——

Mr. Warren: May we examine it, Your Honor?

Mr. Sibley: We tender it in evidence as Plaintiff's Exhibit No. 3.

Mr. Warren: Your Honor, we would like the privilege of joining counsel for the plaintiff in the motion that this be admitted as evidence.

Judge Carroll: All right.

Mr. Sibley: Will you join me with the other two?

Mr. Warren: No, sir; we regard those as possibly spurious.

The Clerk: Plaintiff's Exhibit No. 3.

(The document referred to was thereupon marked Plaintiff's Exhibit No. 3.)

By Mr. Sibley:

Q. Did anybody send you a copy of the advertisement,

[fol. 39] under the name of the Los Angeles Joint Executive Board of the Hotel, Restaurant Employees A.F. of L. appearing in the Los Angeles Examiner of April 21, 1955; did you get that one?

A. Mr. Sibley, except for the date, I am not sure whether it was of that date, but I do recall receiving a copy of the Los Angeles Examiner, and I cannot testify truthfully, and answer truthfully, yes, to your question. If you insist on including the date—if you will omit the date, I will answer, yes.

Q. Do you know whether or not it appeared in the Los Angeles Examiner?

A. Yes; it was from the Los Angeles Examiner, but I am not certain as to the date. It might have been a different date.

Q. Excluding the date, is that the advertisement that you received?

A. Approximately, yes. I would say that is approximately. It may have been language—it might have been somewhat different—there might have been fewer hotels at the time, or more hotels. I see this is limited to seven hotels. It might have been, maybe, eight or maybe six. I do not think that—I have a copy here.

Q. Let me ask you this: who was supplying these people, in Los Angeles and New York, with the number of hotels [fol. 40] then, as they say are on strike; were you furnishing that information to them?

A. I was the one who was furnishing the information, and every time the newspapers called me up and asked me how many people—how many hotels are on—blah—blah—blah—and I give them the statements as I knew. I suppose the newspaper men then passed it on to the other A.P. and U.P., and I.N.S. and other services, and that is how it got to where it was.

Q. Did you furnish to your affiliates in New York and Cincinnati, from day to day, the number of hotels you then had picket lines?

Mr. Gramling: If Your Honors please, I object to that question. What a member of a union may report to his own union is a privileged communication that would have no

bearing whatsoever on whether or not Mr. Sibley is entitled to an injunction.

In other words, suppose he went to a meeting and made a report to the meeting—what does that have to do with Mr. Sibley's right to an injunction?

Judge Carroll: Has he answered the last question? Objection overruled.

Mr. Sibley: Answer the question.

[fol. 41] The Witness: Repeat the question.

By Mr. Sibley:

Q. The question is——

Judge Cannon: Let the Reporter read the question.

(Thereupon the question was read as follows:

"Q. Did you furnish to your affiliates in New York and Cincinnati, from day to day, the number of hotels you then had picket lines?"

The Witness: No, I would not say that I furnished it from day to day. I would say that they called me up, occasionally, and they wanted to know how things are going and how many hotels are being picketed, and I would give them the information as it prevailed at that time.

By Mr. Sibley:

Q. Did you supply them with the information?

A. Yes, I did answer their questions to the best of my ability.

Mr. Sibley: We tender in evidence the advertisement that the witness identified, and ask that it be marked in evidence as Plaintiff's Exhibit No. 4.

Mr. Warren: We object to it on all the previous grounds stated, and ask to be excused from repeating the previous [fol. 42] argument in support of the grounds; but I wish to offer this additional comment, if the Court will permit me, and that is that the persons presumably who caused this ad to be published, are not within the jurisdiction of this Court and, certainly, are not before the Court, and not

subject to this Court's order; and the Court, as far as anything that appears here, would have no power to restrain their acts, and it is just dealing with something that is almost beside the point, as far as this proceeding is concerned.

Judge Carroll: Objection overruled.

(The document referred to was thereupon marked Plaintiff's Exhibit No. 4.)

By Mr. Sibley:

Q. Mr. Herman, are you familiar with this article quoting you of the Miami Daily News of Sunday, April 24, 1955, under the by-line of Mr. Haines Corbett?

A. I read the article.

Q. I want to ask you if this quotation of yours is accurate——

Mr. Brown: Just a minute now, please. I object, Your Honor. I do not see the materiality of a quotation contained [fol. 43] in the newspaper of this witness who is, after all, as I understand it, Mr. Sibley's witness. It seems to be a self-serving declaration, and Mr. Sibley has called Mr. Herman, and now he is asking his own witness, "What did you say on some other occasion to the press?"

I submit, Your Honor, under the rules of——

Judge Carroll: Have you asked him whether he made the statement in there?

Mr. Sibley: I just before asked him, did he make the statement.

Judge Carroll: There is no reason to read it. Let him see it.

Mr. Warren: Your Honor, I would like to interpose this further objection, that you cannot cross examine your own witness, unless he has been determined to be hostile, and this witness appears to be very friendly.

By Mr. Sibley:

Q. Did you make that statement I point to here?

Mr. Sibley: Can I read it for the record?

Mr. Brown: We object to it being read. The Court in-

structed the witness to examine it to see if he made the statement.

Mr. Warren: It is the fair way to proceed that way.

[fol. 44] Judge Carroll: Wait a minute. Did you ask him if that was his statement?

Mr. Sibley: I am going to read what——

Judge Carroll: Do not read it.

Mr. Sibley: And then ask him whether——

Judge Carroll: We are trying to avoid reading it into the record.

Mr. Sibley: Then there will be no way for me to complete the record, otherwise. I have him on cross examination, and he is an adverse witness under Rule 1.37, and my friend here from Cincinnati does not know that we can call adverse witnesses, especially an agent——

Mr. Warren: May I respectively (sic) ask that Mr. Sibley proceed in accordance with Your Honor's ruling. If he denies it, he can get it in the record.

Judge Carroll: I will change the ruling. Ask him the question and read it to him.

Mr. Sibley: All right, sir.

By Mr. Sibley:

Q. Did you make this statement to Mr. Haines Corbett?

> "I am not interested in working conditions. I am not a humanitarian. I do not work under the conditions [fol. 45] of hotel employees at Miami Beach."

A. I did not.

Q. You did not make that statement?

A. No, sir. Shall I tell you what statement I did make?

Q. I am not interested in that.

Mr. Warren: We insist that his right—that he be heard on that. Do not cut him off.

Judge Carroll: Overruled. You can bring it out later, if you care to.

By Mr. Sibley:

Q. Are you familiar, sir, with this article that appeared

in the Miami Herald, on April 25th, under the by-line of Mr. Bryan Donaldson?

A. Generally, yes. I read the article.

Q. Now, Mr. Donaldson attributes this statement to you, and I want to know whether or not you made this statement to him——

Mr. Brown: I object. He has shown him the statement, and he said he did not. Well, he has said that he read the statement. Now, I do not think it is necessary for counsel to read it as to the Court.

Judge Carroll: Objection overruled.

By Mr. Sibley:

Q. (Reading) "If any restraining orders are granted, it will not make any difference." Did you make any state-
[fol. 46] ment such as that to him?

A. No, sir.

Q. (Reading) And did you make this statement—"if an injunction is granted, the picketing will continue as usual."

A. No, sir. I will tell you what I did say to him.

Q. I am not interested.

Mr. Warren: Your Honor—would Your Honor permit him to explain it, so it will go as a part of the context of his testimony, and it will be contemporaneous with it and not isolated from it far down from the record there?

It is customary to let a witness, I believe, at the time, ordinarily, to explain his answer at the time and not later on.

If Your Honors will permit him to explain this, because I happened to discuss this with him and I know the explanation that he can give.

I say to you, very earnestly, as a member of the Court and conscious of my responsibilities, that if you permit this to come in at this time, it would make this thing more understandable, in my humble belief.

Judge Carroll: Overruled; but that is without prejudice
[fol. 47] to your bringing out the matters, if it is material.

By Mr. Sibley:

Q. Mr. Herman, did you, in your local, have this hand bill printed and distributed?

A. Yes, sir.

Mr. Sibley: We tender in evidence the hand bill identified by the witness, and ask that it be marked in evidence as Plaintiff's Exhibit No. 5.

Mr. Warren: No objection—Your Honor, I wish to introduce this further objection, that the line of questioning that Mr. Sibley is carrying on here is not in accordance with Your Honor's ruling or directive, in which I understood you to outline the limit of the corridor within which he could proceed in this hearing here today.

He has gone so far afield from it, I thought he was talking about another case.

Judge Carroll: We outlined what we thought was the material matter to go into, and I asked counsel earlier, when he started the testimony, that if he recalled that, and I assumed he is trying to keep within it, and it is his case, and we are doing that in the interests of conserving time [fol. 48] and trying to expedite the matter to a conclusion.

(The document referred to was thereupon marked Plaintiff's Exhibit No. 5.)

By Mr. Sibley:

Q. Mr. Herman, did your Local No. 255 have this hand bill printed and distributed?

A. Yes, sir.

Mr. Sibley: We tender in evidence the hand bill identified by the witness, and ask to have it marked in evidence.

Mr. Warren: No objection.

Mr. Sibley: And have it marked in evidence as No. 6 for the Plaintiff.

Mr. Warren: No objection to Exhibit No. 6.

(The document referred to was thereupon marked Plaintiff's Exhibit No. 6 in evidence.)

By Mr. Sibley:

Q. Mr. Herman, did your local 255 have this hand bill printed and distributed?

A. Yes, sir.

Mr. Sibley: We tender in evidence the hand bill identified by the witness and ask that it be marked Plaintiff's Exhibit No. 7.

Mr. Warren: No objection, Your Honor, but respectfully ask the Court if it will not request Mr. Sibley to state what part of his complaint this is designed to prove. What is the [fol. 49] purpose of it?

Mr. Sibley: If you read my complaint, sir, and if you read the hand bills which you have not done yet, you will see it very clearly.

Judge Carroll: Mark it.

(The document just referred to was thereupon marked Plaintiff's Exhibit No. 7.)

By Mr. Sibley:

Q. Mr. Herman, do you know a gentleman named Nicholas Campas?

A. No, sir; I do not.

Q. Nicholas Campas, who is the business manager for the Hotel and Restaurant Employees Local Union 583, Troy, New York?

A. Campas—Nicholas Campas, that is.

Q. That is what I asked you.

A. Yes; I do.

Q. Do you know him?

A. Yes; I do.

Q. Do you know, sir, Jack Davis?

A. Yes; I do.

Q. Are you familiar with the testimony that those two gentlemen gave concerning you before the Un-American Activities Committee of the House of Congress?

Mr. Brown: Now, Your Honor, I object to counsel trying to impeach his own witness, and I ask, how this type [fol. 50] of questioning could be pertinent to this hearing, as Your Honor has limited the evidence at the outset.

Mr. Warren: I will object to it, on the further ground, that whether it is tendered as such, or the effect of it is to try to smear—and "smear" is not good anywhere—if he has been convicted of any crime, I invite Colonel Sibley to ask him that.

But this circuitous, devious, round about, twisted way of trying to smear him by showing this isolated instance—and I might say, I was smeared by committees, myself, but I do not admit the truth of any of the "crap"—I mean the truth—I did not mean to say that.

He ought not to try to smear this fellow and degrade him in that manner, I do not believe, and I hope Colonel Sibley will reconsider——

Judge Carroll: Let us have the question read back.

(The last question was thereupon read by the Reporter as follows:

"Q. Are you familiar with the testimony that those two gentlemen gave concerning you before the Un-American Activities Committee of the House of Con-[fol. 51] gress?"

Judge Carroll: Objection sustained.

By Mr. Sibley:

Q. Have you been a Communist?
A. No, sir.
Q. Or a member of the Communist Party?
A. No, sir.
Q. Did you attend the Communist Party caucuses?

Mr. Brown: Your Honor, I am going to object to all of this——

Judge Carroll: You may finish the question.

By Mr. Sibley:

Q. —continued—with Nicholas Campas?
A. Not with Nicholas Campas or anybody else.

Mr. Brown: Now, just a moment. I am going to object to this entire line of questioning, under solid legal principles that this——

Judge Cannon: Just a moment. He objected, and the answer—did you not object to the last question?

Mr. Brown: I am objecting to it.

Mr. Gramling: We now move it be stricken—the question and the answer be stricken.

Judge Carroll: We are going to grant the motion and the objection and the matter appears to be immaterial at this hearing.

[fol. 52] Mr. Sibley: Will you hear from me on the materiality, Your Honor?

Judge Carroll: Why is it material?

Mr. Sibley: I think it is material, Your Honor, in the organization of a union in this area, to get the background of the organizer.

Judge Carroll: I do not think it is necessarily material to the case, or perhaps some phase of the case, but it is immaterial to your application this afternoon.

By Mr. Sibley:

Q. Did you, as president of Local No. 6, authorize Local No. 6 to engage in any picketing in New York?

Mr. Brown: That is going pretty far afield.

The Witness: When was the picketing?

Mr. Sibley: Read it.

Mr. Brown: Just a moment, Mr. Herman, please.

Your Honor, I do not think we are here to test out picketing in New York at this time, or Chicago or Los Angeles.

I understand the picketing is in Miami, Florida. It is the issue here, and what has happened at some other time, in any other city, is of no materiality here; and since the issue has been limited to a temporary restraining order and [fol. 53] concise facts that might apply to it, then, in this entire broad field, counsel should be advised is not permissible.

Judge Carroll: Objection sustained, as it is immaterial.

Mr. Sibley: Is it immaterial, Your Honor, if in connection with this picketing, in connection with this picketing in Miami, which is now being carried on, not at the place of busness, but in New York, on the New York streets, contrary to our statute.

Mr. Brown: I think our statutes have nothing to do with picketing in New York, but the New York——

Judge Carroll: The application deals with what?

Mr. Sibley: It deals with unlawful picketing here or any place, unlawfully—unlawful conduct.

Mr. Gramling: Gentlemen, his complaint is specific, that he wants an injunction against picketing by the numbers of pickets in front of the specific hotels. In his nine respective suits, he did not tell anything about picketing in New York in his complaint.

Judge Carroll: Are you seeking to enjoin picketing elsewhere than here?

[fol. 54] Mr. Sibley: I am trying to show a pattern of unlawfulness and disregard of our statutes by this union, which I have a right to do.

This union has discarded every law in Florida. Their advertisements are different, in that they have engaged in the most fraudulent conduct, and I intend to show it.

Mr. Warren: May I respectfully suggest that Colonel Sibley is not under oath and not a witness, and what he says is a nullity, up to this point.

Mr. Gramling: If Your Honors please, we come to trial supposedly appraised of what is going to be tested out before this Court, and that is the purpose that the complaint says.

As Governor Warren just stated, there is no similarity between the line of proof and the complaint. If I were not here listening to this with my own ears and seeing it with my own eyes, I would swear we were trying a different lawsuit than what the complaint is in the Court file—all nine of them. Certain pleadings are supposed to serve some purpose.

Judge Floyd: Is there anything in the pleadings about that?

Mr. Gramling: Not a word; not one iota in the nine [fol. 55] complaints.

Judge Carroll: About outside picketing?

Mr. Sibley: There is.

Judge Carroll: Is there anything in the complaint about outside picketing?

Mr. Sibley: There is.

Mr. Gramling: I say, if there is anything in the complaint about this, then I have got the wrong carbon copies from his office.

Mr. Warren: I will say, if there is anything there, we will withdraw the objection.

Mr. Sibley: We allege that the picketing being carried on by this union is unlawful, in that the defendant has represented said picketing as being the result of a strike, and the very headlines on that is, "Strike."

Judge Crawford: You contend this is a New York picketing or advertisement in New York.

Mr. Sibley: I am going to ask him—and it is local—when I was stopped. That is what I (sic) after. He is the president of it.

Mr. Warren: Pardon me. I do not understand Mr. Herman to be president of the local. It is another gentleman listed. Pardon me.

Judge Carroll: Objection sustained at this time.

[fol. 56] Mr. Sibley: Mark these for identification, Mr. Clerk.

(Three documents just referred to were thereupon marked Plaintiff's Exhibits 1-C, 1-D and 1-E, for identification, respectively.)

Judge Carroll: We will take a ten minute recess.

(Thereupon a short recess was taken, after which the following proceedings were had.)

Mr. Sibley: Come down, Mr. Herman.

Mr. Gramling: Wait a minute. If Your Honor please, I feel it would be only proper to permit us to interrogate this witness, at least to the point of inviting him to explain certain answers he made, that were shut off.

Judge Carroll: You are entitled to cross examine him on the subject matter that he testified about.

Mr. Gramling: Thank you.

Judge Cannon: He could have been finished while you were making your speech.

Mr. Gramling: There has been no haste.

Judge Carroll: One counsel to examine.

[fol. 57] Decide which one you want.

Cross examination.

By Mr. Brown:

Q. Mr. Herman, you have been asked whether or not you had certain conversations with newspaper reporters,

and you have denied the printed version of those conversations.

Judge Carroll: The first two were for identification, and the other went into evidence.

Mr. Brown: May I have those clippings that you read from, Mr. Sibley?

Mr. Sibley: Yes.

By Mr. Brown:

Q. You were asked about a conversation with a reporter, Mr. Haines Corbett of the Miami Daily News. What was your conversation with him?

A. He asked me, among other things, specifically with reference to the questions that Mr. Sibley asked this newspaper reporter asked me, "Well, what are the issues—the economic issues and the work conditions that are involved here," and I explained to this reporter, which he either deliberately or inadvertently misunderstood.

I said, "At this present moment, there are no economic issues involved; that this, at the present moment is only a dispute over the recognition of the union. If and when the union is recognized, then we will enter into a discussion of the wages, hours and conditions of employment under [fol. 58] which these people work."

Now, at this moment, I said, "This is a principle fight on constitutional issues and not a humanitarian fight on the immediate working conditions." The way he saw fit to print it was as far away as I said as anything could possibly be.

Q. You were asked about a conversation with Mr. Bryan Donaldson, a Herald staff writer, which is purported to have been printed in the Miami Herald of April 25. Will you tell us what was the conversation with Mr. Donaldson?

A. I discussed with Mr. Donaldson, and with other reporters from time to time, the possibility of the consequences of the application for a temporary injunction, on the part of the hotels.

Newspaper reporters ask leading questions, and they asked me, "Well, now, the hotels have gone in for an injunction, and if they get their injunction, you are going to have to stop your picketing, and then they will be able to break the strike."

I said, "That may very well be if they are successful in getting the injunction to restrain Local 255, but there are so many other unions involved here, there is the Electrician's Union, Carpenter's Union, Painter's Union, Air Conditioning men—the Central Labor Union as a whole is involved, and that I would not be a bit surprised if Local 255 were to be restrained from picketing, that the other [fol. 59] unions might take up the picketing in support of their members who are also involved in this dispute." That was the nature of my discussion, more or less, in an explanation of what might happen.

I, at no time, said or meant to indicate that even if an injunction were at issue, that we would defy the order of the Court and proceed with picketing, anyway.

I said that Local 255 might be restrained from picketing, but there are other unions who might enter into this dispute and picket the hotels. That was the gist of that conversation, Mr. Brown.

Q. Mr. Herman, you were asked whether or not you were president of Local 6 of New York.

A. I am that; yes.

Q. When did you become president?

A. I became president of Local 6 in New York, in 1951—1950 or 1951—yes—I think it was either 1950 or 1951. It was immediately following the trusteeship in the Local Union.

Q. Were you elected president?

A. Yes; I was elected president.

Q. Under what circumstances?

A. Well, sometime in 1949——

Judge Carroll: How is that material for this case?

Mr. Brown: Because, your Honor, it is a very—a very serious question has been insinuated into this case by coun- [fol. 60] sel.

One question that was asked here, and that was permitted to be answered, was, "Are you a Communist," and I am endeavoring to show that not only is the answer correct, but Mr. Herman is not and never has been a Communist, but that he was elected president of Local 6 after the defeat of the Communist nucleus in New York City, and that

he led and spearheaded the fight to oust the Communists from a Local Union.

Judge Carroll: We stopped the questioning along that line. I think it is immaterial.

The Witness: Do I have a question to answer?

Judge Floyd: No.

The Witness: May I make a statement?

Judge Cannon: Let your lawyers handle it. You are a witness.

The Witness: Yes.

Judge Cannon: Then be still.

By Mr. Brown:

Q. Mr. Herman, you have been asked whether or not your local distributed leaflets in the hotels. Will you tell us why these leaflets were distributed, plaintiff's Exhibit No. 5, for example?

A. Well, sir, we had written a letter to the Hotel Association, to the executive director, to Mr. Leon McKaskill, [fol. 61] and a copy of that letter went to everyone of the members of the board of directors, including some 30 hotel owners who are operators, who were members of the board of directors.

We asked them to get in touch with us during the period of ten days following, at which time, we wanted to discuss the claim of the union to the representation of the hotel employees.

As time went along, and the Hotel Association was not answering our letters, and none of the hotel owners were making any replies, we had an idea that the hotel owners might see fit to disregard our request for a conference and provoke us into a stoppage.

So we addressed the letters to the guests in the hotels, trying to explain to them the issues as to exactly what happened; that we asked for a conference; that our request has been ignored, and there is a possibility there might be a stoppage of work in protest, on the part of the employees, to the refusal of management to acknowledge—at least acknowledge the letters of the union.

Q. Now, you were asked whether you distributed plaintiff's Exhibit No. 6, which is headed, "To all hotel employees

—sit tight—do not jump the gun." Will you explain the circumstances under which that was distributed?

A. Yes. When the picketing started—when the protest started, on the part of the several hotels where the em-[fol. 62] ployees first became involved, we were besieged by requests from other hotel employees who wanted to walk off the jobs, also, and we addressed the following leaflets to them. We said, "Sit tight—do not jump the gun. We know how you feel. We know——"

Judge Carroll: Yo do not need to read it.

The Witness: We said, "Do not walk off your job without permission from the union." And we addressed it to them in order not to create chaotic situation in the hotels of Miami Beach, where 20,000 hotel employees are involved, and about 300 hotels, and they are champing at the bit because of provocation on the part of employers to refuse to sit down and negotiate with their union.

Mr. Brown: That is all.

Mr. Sibley: Come down.

(Witness excused.)

Thereupon—George E. Fox was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your name.

A. George E. Fox.

Q. What is your occupation?

[fol. 63] A. I am general manager of the Saxony Hotel.

Q. How long have you held that position?

A. Two years and three months.

Q. Mr. Fox, do you know Mr. David Herman?

A. Yes, I do.

Q. Is there a picket line at the Saxony Hotel?

A. There is very much of one.

Q. When was it placed there?

A. On Wednesday morning, April 13—I believe it was about 6:00 o'clock in the morning.

Q. Prior to the placing of the picket line at that hotel—at your hotel, were you or any member or person in charge of the Saxony Hotel invited to negotiate a contract with Mr. Herman, on behalf of the Saxony Hotel?

A. We were not.

Q. What time was the picket line thrown up?

A. I received a call at—I was at home and received a call at 6:00 o'clock in the morning that there was a picket gathering in front of the hotel, and that picket was set up about 6:30, around the property.

Q. What did you see when you got there?

A. I saw quite a group of people in various corners at 32nd and 31st street, and marching with many of them had signs, and many of them were our ex-employees that were visiting with people as they got off the motor bus, and [fol. 64] telling them to go back home, or go——

Mr. Gramling: I object to his testifying as to what somebody said to somebody else, and ask that he be limited to just what he himself saw or observed or his relationship with one of the parties-defendant.

Judge Carroll: Explain to him, Mr. Sibley, that he is not to repeat what other people told him; only what he himself observed.

Mr. Sibley: I only want what you saw or heard. Did you see——

Mr. Gramling: I move that the answer to the last question be stricken.

Judge Carroll: It is stricken.

Judge Carroll: Did he hear that himself?

Mr. Gramling: He heard what some people said to some people elsewhere, unindentified, (sic) and they are not identified.

Judge Carroll: The motion is granted. You may ask it again.

By Mr. Sibley:

Q. Did you see your employees coming to work that morning, getting off the bus?

A. Yes.

Q. What would happen when they got off the bus?

A. They would be intercepted, and would—what the con-
[fol. 65] versation was, I do not know.

Q. Who were intercepted?

A. Various ex-employees.

Q. What was the effect of this picket line?

A. It very seriously affected it. There were over 340 employees that did not report for work, and, as a consequence, it drastically affected the business and still has.

Q. Did a number of your employees sit around all day, especially the women, trying to get into the hotel?

A. That is right.

Q. Will you state whether or not your hotel is now badly crippled by reason of this stoppage of work and the picket line?

A. I would say that it is.

Q. What effect has it had upon service?

A. Our food and beverage service has been drastically hurt—drastically—and our room business is a good percentage under the previous year.

Our conventions that came into the hotel, where we had rooms reserved for them, where we expected an overflow, we carried rooms due to the fact that many of them did not come down and some would not cross a picket line.

Q. Is it impossible for you to ascertain exactly how much monetary damage that you have suffered?

[fol. 66] Mr. Brown: I object to the form of the question.

Mr. Sibley: You may inquire. That is obvious.

Cross examination.

By Mr. Gramling:

Q. Mr. Fox, is your testimony that you have never had any dealings whatsoever—no conversations with Mr. Dave Herman, or any spokesman on behalf of Local 255, prior to the stoppage of work?

A. In what regard, sir?

Q. Have you had any?

A. Yes. I met Mr. Herman, and he addressed the Exchange Club where they meet in the Saxony Hotel, and I

met him at that time. He addressed the Exchange Club in the sense of one of his workers.

Q. Is that the only time that you ever saw him?

A. That was—that is the first time that I saw him.

Q. When did you see him again?

A. I saw him out in front of the hotel, sitting in an automobile, talking to some pickets.

Q. Did you ever receive any letters or communications from him?

A. I received—a copy of a communication that he sent to the Hotel Association—the present Hotel Association.

[fol. 67] Q. Did you receive that prior to the picketing?

A. Yes.

Q. Now, roughly, about how long prior?

A. I would say about—I would say maybe ten days. I do not know exactly.

Q. Is this your testimony, Mr. Fox, that when you recall your hotel being picketed, it took you completely by surprise, because you never had known to that moment, that Local 255 was attempting to talk to you on behalf of union representation?

A. When I saw my hotel picketed, I was the most surprised person in the hotel.

Q. Did you receive a letter dated, or a copy of a letter dated March 30, 1955, to a Mr. Leon C. McKaskill, stating——

Mr. Sibley: Show it to him.

Mr. Warren: Show it to him.

Mr. Sibley: Do you have a copy of the letter? I will concede that he received one, and if you have a copy, you can put it in evidence.

Mr. Gramling: I desire to refer to the more pertinent portions of this.

Mr. Sibley: If you wish——

Mr. Gramling: May I proceed in the questioning or cross examining?

[fol. 68] Judge Carroll: What are you asking him?

Mr. Gramling: I want to know whether or not he was aware, that over the signature of Dave Herman this message was gotten to him:

"This union represents a substantial number of hotel employees who are employed in Miami Beach hotels by members of your association."

Q. You are a member of the Miami Beach Hotel Owners Association, are you not?

A. That is right.

Q. Are you aware that this letter requested a meeting or a coming together of management or a representative of management and the union for the purpose of negotiating labor matters and controversies?

Mr. Sibley: I object to that, upon the ground the witness should be shown the letter, so that the witness will have a chance to identify it.

When he is, I will admit it in evidence, and you may read from a portion of it.

By Mr. Gramling:

Q. To save time, I will show you—I hand you herewith——

A. I can read it.

Q. —the hotel employees—a newspaper, with a copy of a letter on its letterhead—on the letterhead of 255, to Mr. McKaskill, and ask if you did receive a copy of that letter? [fol. 69] A. I actually—I do not believe that this letter is the same, in substance, I received.

Now, it could be—I would have (sic) check my file. I do not believe it is worded the way I received my letter. I am not certain of that.

Q. Well, Mr. Fox, would you be so kind, in the event that the Court recesses this hearing for a future date, to refresh your memory as to whether or not this a true and correct copy?

A. I will bring my file.

Q. Is it possible, that——

Mr. Gramling: Will opposing counsel stipulate as to the authenticity of that print?

Mr. Sibley: I am not sure. I really am not sure. If you have a copy, let me see it. Is Mr. McKaskill here. Do you have a copy of that letter that they sent you?

Mr. Gramling: This is too informal.

Gentlemen, I request this be marked as defendent's Exhibit No. 1-A for identification.

(The document referred to was thereupon marked "Defendant's Exhibit No. 1-A for Identification.)

By Mr. Gramling:

Q. Mr. Fox, did you ever talk to Mr. Herman over the telephone?

[fol. 70] A. Yes, I did.

Q. What was the advice of that conversation?

A. Mr. Herman told me that three days after our picket line was up, Mr. Herman called me and told me that some of the members had mentioned to him that I said I was not given an opportunity to negotiate, and he said the members were in the—had come to his office, and he said, be that as it may, it is now history. He said, "You pay your boss I will negotiate with him, now." And I said to him, "Mr. Herman, I would suggest"—I might have called him "Dave". I said, "I would suggest that you get in touch with our lawyer, Mr. Sibley."

Q. Mr. Fox, is it not true that you did have a telephone conversation with Mr. David Herman prior to the picketing?

A. Now, that is right—prior to the picketing—it was on a—I cannot tell you the exact date. Mr. Herman called the hotel and said that he objected to the assistant housekeeper discussing people joining or not joining the union, and I told him the information he had was untrue.

Q. Now, as a matter of fact, didn't he ask you at that time—and this is prior to the picketing—that he did want to negotiate with you, and that you said your employer—I believe Mr. Sax—is that his name?

[fol. 71] A. Yes.

Q. Was out of town?

A. No.

Q. You did not tell Mr. Herman that Mr. Sax was out (sic) town?

A. Mr. Herman asked me when Mr. Sax would return to the city, and Mr. Herman knew he was out of town. Evidently he had information that he was out of town.

Q. When did Mr. Sax return?

A. I do not recall the exact date that he returned, but it was before the picket line; yes.

Q. Mr. Sax did come back prior to the picketing?

A. Yes.

Q. Mr. Herman had already inquired of you when Mr. Sax was going to return to this jurisdiction; is that correct?

A. He asked me when he was going to return. I told him I did not know.

Q. You knew that Mr. Herman wanted to talk to Mr. Sax, did you not?

A. I was sure he was going to talk to him.

Q. As a matter of fact, hadn't you already told Mr. Herman that you were not in a position to discuss labor matters with him; that that would be up to Mr. Sax?

A. No.

[fol. 72] Q. You never told him that?

A. No; I do not recall that conversation at all, sir.

Q. Well, do you have (sic) idea, as to why it was that Mr. Herman was waiting for Mr. Sax's return?

A. Mr. Herman knew when Mr. Sax was going to return, without asking me.

Q. Now, when Mr. Sax did return, do you know whether or not either you, or to your knowledge, Mr. Sax contacted Mr. Herman?

A. What was that? Give that to me again?

(The pending question was thereupon read by the reporter as above recorded.)

A. I do not know.

Q. You did not; did you?

A. Contact Mr. Herman?

Q. Yes.

A. I did not contact him.

Q. Now, Mr. Fox, what instructions were given to your various department heads, and generally to your staff, as to what they should—as to how they should instruct the general employees on the subject of union membership?

A. There was no instruction.

Q. You gave no instructions?

A. No, sir.

[fol. 73] Q. Who is Mrs. Titour?

A. She is our executive housekeeper.

Q. She is your executive housekeeper?

A. That is right.

Q. Now, as such, when she speaks to the maids and to the housemen, she speaks with the authority of your office; is that correct?

Mr. Sibley: Just a minute. I object, upon the ground this is not in cross of anything on direct examination. I dislike to do this, but we are in a hurry, and I am going to be cramped on putting on my proof, and if I have to make that objection——

Mr. Gramling: If your Honor, please, this is in direct response, according to him, where all of a sudden there are pickets with no prior notice nor anything else, and now we find out that there has been prior conversation, that actually Mr. Herman was waiting for the arrival of Mr. Fox's superior who, upon arriving, never did—did not open his mouth, and we get into the veracity of the respective plaintiffs and the managers.

Judge Carroll: The question right now is the materiality of what you are asking. If you want to bring it out, bring it out later. Objection overruled.

[fol. 74] By Mr. Gramling:

Q. Who is Mr.——

Judge Carroll: Is the question? Did he answer it?

(The last question was thereupon read by the reported (sic) as follows:)

("Now, as such, when she speaks to the maids and to the housemen, she speaks with the authority of your office; is that correct?")

Judge Carroll: Objection overruled.

The Witness: When the house—when the housekeeper speaks in regard to operations or policies, within the hotel, she speaks for my office.

By Mr. Gramling:

Q. Who is Mr. Winebrenner?

A. Mr. Winebrenner is a former superintendent of service at the hotel.

Q. You say, "former"?

A. That is right.

Q. When did he leave your employ?

A. He resigned, I believe it was the 15th of this month.

Q. The 15th of this month?

A. Yes.

Q. Was he employed as superintendent of service at the time of the commencement of the picketing?

A. Yes.

[fol. 75] Q. And how long prior to that?

A. I do not know how long he worked. He has been there ever since I have been there.

Q. In other words, you would say more than a month prior to the picketing?

A. Yes.

Q. As much as a year?

A. I would say so, yes.

Q. When he speaks, does he speak with the authority of your office behind you?

A. I answered that question, the same way pertaining to policy and management policy and operation. He speaks from our office.

Q. Now, as a matter of fact, the policy—as Mr. Winebrenner told those employees under him that they would be discharged for union activities or membership in a union, that is within the policy of your hotel; is it not?

A. No.

Mr. Sibley: I object to that, and move to strike the answer upon the ground that it is immaterial and irrelevant. They are not picketing on the grounds that they are attempting to fire some union employees; they are picketing on the grounds that we will not negotiate with them—at least that is what they say.

[fol. 76] Judge Carroll: Overruled.

By Mr. Gramling:

Q. You say, no, that would not be with the authority of your office; but, on the other hand, you just stated that when they enunciate the policy of the hotel to the employees under their respective authorities, referring to Mrs. Titour and Mr. Winebrenner—that is certainly within their prerogative as being your subordinate and controlling the employees in their respective departments; is that not correct?

A. There was never a department head in the hotel that was told to stop people from joining the union.

Q. In other words, you did not instruct Mrs. Titour——

A. Absolutely——

Q. —and Mr. Winebrenner to do this?

A. Absolutely not.

Mr. Gramling: That is all.

Mr. Sibley: Come down.

(Witness excused.)

[fol. 77] Thereupon—SAUL COHEN was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your name.

A. Saul Cohen.

Q. What hotel are you interested in?

A. Casa Blanca.

Q. Do they have a picket line at your hotel?

A. Yes; they do.

Q. When was it put there?

A. I do not recall the date. It has been about ten days ago, I believe.

Q. Were you there when the line went up?

A. No. I came over about a half hour after—I came over about an hour after the line.

Q. What effect has that picket line had on your hotel?

A. It has, as far as business is concerned, it has hurt it; and as far as our staff is concerned, it has hurt, and our food department and our beverage department is in poor condition.

Q. What position do you hold with the Miami Beach Hotel Association?

[fol. 78] A. I am president at the present time.

Q. How long have you been president?

A. About a year and a half, now.

Q. Did you have a conference with Mr. Herman, in March, with reference to the Miami Beach Hotel Association?

A. Yes.

Q. And where did that take place?

A. At my hotel; at the Casa Blanca.

Q. What was said at that conference?

A. Mr. Herman asked me—he was with a Mr. Berlin—Mr. Ira Berlin—and Mr. Herman—I asked Mr. Herman if he was there to talk to me about the Casa Blanca Hotel, and he told me he was not; but he did want to talk to me, as president of the Miami Beach Hotel Association.

He asked me if I would be willing to ask a committee of five or six men, members of the Hotel Association, to sit down as a committee to talk to him about labor relations.

Q. What did you tell him?

A. I told him I could not.

Q. Why?

A. Because it is not my function to do things of that type.

Q. Had the Hotel Association authorized you to negotiate wages, hours and conditions in the individual hotels?

A. Oh, no.

[fol. 79] Q. Now, did you have a conference with Mr. Herman after date, in reference to your hotel, the Casa Blanca?

A. No; I did not.

Q. Did he ever invite you to discuss and negotiate with a representative of your employees?

A. No.

Q. This picket line was brought up without any opportunity for you to negotiate with your employees, as being representatives of the union?

Mr. Brown: I object to the leading form of questions.

Mr. Sibley: I will withdraw the question.

By Mr. Sibley:

Q. Will you state whether or not an opportunity was afforded you to negotiate with Mr. Herman as the alleged representative of your employees.

Mr. Brown: I object.
Mr. Sibley: I asked him to state whether or not——
Judge Carroll: Overruled.

By Mr. Sibley:

Q. Answer the question.
A. No; he did not.

Mr. Sibley: You may inquire.

Cross examination.

By Mr. Gramling:

Q. Mr. Cohen, you apparently have testified to the tenor or effect that Mr. Dave Herman talked to you about wanting [fol. 80] to negotiate, or recognition of the union for the purpose of negotiating, but he did not talk to you as president of your hotel or spokesman of your hotel, but rather with your hat turned in another direction and spoke to you only as president of the Miami Beach Hotel Owners Association; is that it?

A. I do wear a hat; but, actually he spoke to me about the—asked me to appoint a committee of the members of the Hotel Association, to sit down and talk to him about labor relations.

Q. But he talked to you, you say, only in your capacity as president?

A. That is correct.

Q. That is, of the hotel owners, and not in your managerial capacity in your hotel?

A. That is correct.

Q. Now, as a matter of fact, did you not tell Mr. Herman, or lead him to believe that the Hotel Owners Association was actually the appropriate unit to discuss management-

labor, or labor-management relations on behalf of the industry?

A. No.

Q. You never said anything like that?

A. No.

Q. Now, Mr. Cohen, on cross examination, I do not want to trick you or mislead you. I want to be sure that you [fol. 81] understand me, so that your answers are, according to your oath and to the best of your understanding.

Mr. Sibley: Ask him the question.

The Witness: I understand.

Mr. Gramling: I want to be sure, that if the time comes for some impeachment, I did not warn——

Mr. Sibley: He is under oath. He is warned.

By Mr. Gramling:

Q. You have never taken the position that the appropriate unit for bargaining, or let us say representation in management-labor relations, is through the Hotel Owners Association?

A. That is my position.

Q. Now, as a matter of fact, does your organization get out bulletins to its members?

A. On rare occasions, yes, we do.

Q. Do you recall your Association getting out a bulletin dated November 7, 1952?

A. I do not believe I was a member of the Association at that time. If I was—I know that I was not an officer.

Q. Well, if you were not an officer, you are now, are you not?

A. Yes; I am now

Q. In your present office, have you repudiated the utterances or the policies of your predecessors?

[fol. 82] Mr. Sibley: I object to that, upon the ground that it is immaterial and irrelevant, and calls for a conclusion, and it is not sensible under the circumstances.

Judge Carroll: Sustained.

Mr. Gramling: Gentlemen, prior to that—I would like to, if I may be heard for a moment—I have here, which I am going to offer for identification, a special bulletin——

Judge Carroll: The ruling to the last question was sustained.

Mr. Gramling: All right, sir.

By Mr. Gramling:

Q. Is Mr. Samuel Kaplan still connected with the Hotel Owners Association?

A. No, sir.

Q. You are not familiar with what transpired, as far back as 1952?

A. I do not. I did not—I had very little interest in Association matters at that time. I do not even recall whether I was a member of the Association.

Q. Now, your position, then, is that because Mr. Kaplan spoke to you as president of the Association, and not in your official capacity with your hotel, then you did not know, as manager—I mean your connection with the hotel, you did not know that he wanted to talk to you about labor relations?

[fol. 83] A. I cannot understand——

Mr. Sibley: You said, "Mr. Kaplan."

The Witness: I was thinking in terms of Mr. Kaplan. I do not know what——

Mr. Gramling: Strike that question. Strike the last question.

By Mr. Gramling:

Q. Mr. Cohen, you have testified, on direct examination, that you did not know that Mr. Herman wanted to meet with you pertaining to labor-management relations; is that correct?

A. I did not say that. I did not say that. I do not think I did.

Q. Didn't you testify that picketing took you by surprise, without your ever having an opportunity to talk to Mr. Herman?

A. Well, I told you that I had, at one time, spoken to Mr. Herman, and I told you just what the conversation was about.

Q. But your sworn complaint in this case says that you were suddenly picketed without any approach toward negotiation; that you never——

A. That is right.

Mr. Sibley: The sworn complaint tells about the conference between Mr. Cohen and Mr. Herman. Read the complaint.

[fol. 84] Mr. Gramling: Yes; but in his representative capacity.

By Mr. Gramling:

Q. Now, as an individual, Mr. Cohen, didn't you know that Mr. Herman wanted to talk to you about labor relations?

A. Where?

Q. At your hotel—all the hotels—any hotel on Miami Beach, including your hotel?

A. No, sir; I did not.

Q. Do you know it now?

A. I read the newspapers, and see that it includes me, too.

Q. Well, now, that is the only way that you know, now, that you do know from the newspapers or any other source that Local 255 would like to talk to you—would you be willing to talk?

A. To Local 255? Under the circumstances as the means and ways that they have handled their present campaign to do the things that they are doing to the hotels on Miami Beach, I do not believe that I would, sir.

Q. Now, why won't you negotiate with the union, as representatives of such of its members as are your employees?

A. I cannot get that question.

Mr. Gramling: Read it back to him.

(The last question was read by the reporter as above recorded.)

[fol. 84a] A. I did not say that I would not negotiate with the union. I said that I would not negotiate with this

union. I do not think that I would consider some of the things that they have done to cripple our business.

Q. Mr. Cohen, is it not right that the laws of the State of Florida, in which we all live, tells the workers that they are to select their union, and not you to tell them, well, you do not like a union that they have?

A. I do not know that much about the laws of the State.

Q. In other words, if you would select a different union for them, you would talk to that other union, and you——

A. I did not say that, sir.

Q. How many employees ceased work at the commencement of the picketing?

A. I do not know. I do not have access to those records. I do not know how many.

Q. I believe you said that certain departments of your hotel are experiencing what you call, roughly, business as usual?

A. Did I say that?

Q. Well, that they are not experiencing any great distress?

A. I did not say that, sir.

Q. Well, is it true or incorrect that you are experiencing [fol. 85] great distress in your business?

A. We are experiencing some difficulty in the operation of our hotel, and are some departments that are—most of the departments that are not doing the usual amount of business.

Q. Now, when you say the "usual amount of business," upon what do you predicate that assumption?

A. Well, we keep records as to how (sic) business we do. We know how many people we have to feed, and we have an average amount of business that we expect to do, and usually do in our beverage department, and the other departments.

Q. You keep those records?

A. I do not keep the records. They are kept for me, sir.

Q. Then, it is possible for you to ascertain exactly what you would say you are suffering, as the result of the picket line?

A. Those records are available for me.

Q. Do you have those records here with you?

A. Oh, no.

Q. What would those records reflect, if you know accurately, as a loss of your business?

A. I know it would reflect, that in our room business, we presently have about 20 to 30 rooms that we are devoting to the members—a great number of the members of the staff of our hotel. We are housing them there for the [fol. 86] reason that they, themselves, are frightened to leave our hotel, and we are frightened to leave them leave us, since they might not possibly come back.

Mr. Gramling: Do not make a speech from the witness stand, and I move to strike this conclusion of his as to how his employees or staff feel.

Mr. Sibley: I think that is a reflection of loss of business. He has to keep them in the hotel.

The Witness: I answered the question to the best of my ability.

Judge Carroll: Denied.

By Mr. Gramling:

Q. Now, those—you say 20 or 30 rooms?

A. 20 or 30.

Q. Are those the only rooms that you have that are non-income producing?

A. I have not looked at the records today, or I do not believe, in a day or two.

Q. But you could have looked at them, could you not have, in the last few days?

A. They are available to me.

Q. You have taken an oath that you are suffering grave and irreparable injury?

A. That is correct, sir.

[fol. 87] Q. Now, you also state that you could not ascertain it?

A. I did not say that. I said the records are available for me.

Q. And who—over your signature, where you swore to that—may I read the pertinent part——

A. Well——

Q. Well, now, this is what you signed and swore to—while they are looking for that—you swore to the fact that by reason of the unlawful conduct of the defendants, members of the public are being deterred and stopped from patronizing the plaintiff's place of business, which is causing plaintiff irreparable loss and damage.

Now, you did not say seriously inconvenienced by having to have your staff sleep in, but you state, irreparable loss, and then you go on to add—there is no method or means by which the exact loss may be determined, and there is no method or means of determining the full damages caused —and so on.

Do you recall that statement?

A. Yes; I recall the statement.

Q. And yet, now, you testified that you do keep records on a day to day basis, and you can tell exactly what your business should have been?

A. I only say that I have not looked at the records in [fol. 88] the last couple of days.

Q. What do the records show the day before yesterday, or the day you did look at them?

A. I get a record in my hotel, and that is—it has sheets of information pertaining to every possible department, and you do not expect me to come in here and give you an answer as to how much business I did one day, as compared to the next?

Q. I want to know whether you had them, and I will tell you why I want to know, because I do not want to quarrel with you on the witness stand.

A. Ask me in a more direct way and——

Q. Is it not true that you have publicized, on behalf of your hotel, that your business is not suffering; that you are getting along splendidly and that the strike is not at all effective?

A. What would you do if you were a business man?

Judge Carroll: Just a moment. Try to make a direct answer.

Mr. Sibley: Answer the question.

The Witness: Please ask the question again.

Mr. Gramling: Read the question.

(The following question was thereupon read by the reporter:

"Q. Is it not true that you have publicized, on behalf of [fol. 89] your hotel, that your business is not suffering; that you are getting along splendidly and that the strike is not at all effective?"

The Witness: Yes; there would be some publicity to that statement. May I give you the reason why that was—that type of business—that publicity?

By Mr. Gramling:

Q. If you want to explain, go ahead.

A. It is my opinion that it would be bad business, on my part, to publicize the fact that my business has been impaired; that my service is not as good as it is, usually. I do not see how a person could possibly get business into their hotel, to broadcast the fact of that type. I am still in business, and I would like to continue in business.

Q. Was it really the truth, when you did advertise that you were not experiencing any difficulty as a result of the strike, that that was not effective where you were concerned?

A. I do not understand the question.

Mr. Gramling: Read the question.

(The last question was thereupon read by the Reporter as above recorded.)

[fol. 90] Judge Carroll: He already answered it.

Mr. Gramling: He said he did not understand it.

The Witness: Isn't that a question repeated in some way?

Judge Carroll: He already answered the question.

By Mr. Gramling:

Q. Mr. Cohen, did you not advertise in three distinct full page ads just three that I know of—perhaps more—but three that I know of—that the strike—to the effect that the strike was not effective; that you were able to

give, generally, the same service; that you were not experiencing any difficulty?

A. I do not recall what was in that ad. I do not recall all of the words.

Q. Generally, was that not what you wanted to leave (sic) the public to believe, that you were not seriously inconvenienced, so they would come to your hotel?

A. There are a lot of things in that newspaper copy—I do not know what it is that you are referring to. Be more specific and I will try to give you the answer.

Q. Did you publish in full page ads, that your hotel was able to fully and properly serve the people, and that you were not being inconvenienced or hurt by the strike, and generally that the strike was not effective?

[fol. 91] A. That is exactly the same thing that I told you before, sir. It would be very bad business on our part—on my part—to tell the public that my business is impaired; that I could not give them good service; that they would be making a big mistake to come to my hotel.

I am still in business, and it is my purpose to give the best publicity that I can for my hotel.

Q. So, you did resort to that publicity.

A. That is right.

Q. Now, is it true what you say in your bill of complaint, that you are suffering irreparable damage?

A. There is no question to it, sir.

Q. Then, which is true—are you falsely advertising, or are you falsely swearing; that is the only question I am asking you—which is correct?

A. I do not think the word "false" would fit into it.

Mr. Gramling: That is all.

Redirect examination.

By Mr. Sibley:

Q. As a result of this so-called strike, that they referred to, have you had to close your dining room?

A. No; we did not close our dining room, but we were very, very much impaired in our dining room. We have been serving considerably less meals now than we did ten [fol. 92] days to two weeks ago.

Mr. Sibley: That is all. Come down.

(Witness excused.)

Thereupon—Ted Kedzierski was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your name.
A. Ted Kedzierski.
Q. What is your occupation or profession?
A. Sergeant; Identification and Records Bureau of the Miami Beach Police Department.
Q. Have you, in pursuant (sic) to a subpoena duces tecum produced all of the records in reference to all of the violence and instances which have grown out of this present hotel difficulty?
A. I think so; yes.
Q. Let me see those, please. The papers you handed me are the complaint that has been filed in reference to violence at the several hotels where there is a picket line at the present time?
A. That's correct.

[fol. 93] Mr. Brown: I object to the leading question.
Judge Carroll: Overruled.
Mr. Sibley: I am trying to identify the records.
Mr. Brown: I object, on the further grounds, Your Honor, that the testimony is entirely by counsel. He defines the nature of the acts.

Offers in Evidence

Mr. Sibley: I am going to offer them in evidence.
Mr. Brown: I think the evidence is proper. The documents might be proper, if they are the right kind, but the question——
Judge Carroll: We will disregard counsel's classification of the documents.

Mr. Sibley: We tender in evidence the documents produced by the witness.

Mr. Warren: Your Honor, would we be permitted to ask the witness some questions before, either concerning our consenting or objecting to it?

Judge Crawford: Concerning his qualifications?

Mr. Warren: Concerning his knowledge whether or not these papers refer to acts of violence on the picket line.

Judge Carroll: Yes.

Mr. Sibley: 25 documents.

[fol. 94] Mr. Warren: Your name is what?

The Witness: Sergeant Kedzierski.

Mr. Warren: Now, I hold in my hand Arrest No. 82,258, a card showing an arrest, which arrest purports to have been for Luiz Philip Cabaliero, and I will ask you to examine that and state, if you know of your own knowledge—not from what the records say—but from your own knowledge—where the arrest occurred?

The Witness: No, sir; only what is on the record.

Mr. Warren: Do you know who furnished the information for that document in that record?

The Witness: Yes, sir; whoever signed the affidavit.

By Mr. Warren:

Q. Sir?

A. Whoever signed the affidavit.

Q. The signer of this affidavit would be the man who knew whether or not that offense took place there; is that right?

A. That is right.

Q. What does that record show, Sergeant, as to the disposition of that case.

A. That case has not been disposed of as yet.

Q. It is just a mere charge.

[fol. 95] A. Yes.

Q. What does it charge him with—does it charge him with—look again, please, Sergeant?

A. Malicious mischief.

Q. What is malicious mischief?

A. Malicious mischief——

Q. Is that a charge of being suspicious?

A. This says, malicious injury to personal property of another.

Q. Then, would you state again who the signer of that affidavit is? A. Armando Perez.

Q. Is he a member of the Police Department?

A. No, sir.

Q. Well then, the Court has not passed on that charge yet?

A. No, sir.

Q. Now, I hand you Arrest No. 82259, of Leonardo Muniz, and will you look at that and tell me if you have any——

Judge Carroll: I imagine his answer would be the same as to all. You might test him on that and see if they are, and you will not have to go through each one.

By Mr. Warren:

Q. As to all of these, Sergeant, do you have any personal [fol. 96] knowledge as to whether or not the defendants there were at the places named in the charge there?

A. No, sir.

Q. And I will ask you if you can thumb through them, hurriedly, and state if anyone of the defendants named in those warrants there has been tried?

A. Yes, sir; some of them.

Q. Some of them have.

A. Yes.

Q. Are a number of those warrants there charges and counter charges—one person being charged with an offense by an affiant, and he, in turn, charging the other affiant with an offense?

A. Not here; no, sir.

Q. How many of those have been disposed of, would you say; would you thumb through them, if you will, please, and state how many of them have been disposed of by the Court?

Mr. Warren: How many, in all, are there?

Mr. Sibley: There are 25.

Mr. Warren: 25; thank you. I do not want to take up too much time, but could you——

The Witness: None of these.

By Mr. Warren:

Q. None of those has been disposed of; none of the 25? [fol. 97] A. No.

Mr. Warren: Then, Your Honor, not wanting to drag this out, I would like to object to the introduction of any of them, on the grounds that they do not prove anything. They are mere charges and presumption of innocence there, and they lack any probative weight.

And, on the second ground, that they are not the best evidence. And may I say this—and I am not so familiar in these matters, but I am just trying to offer my thought that I have to the Court.

If those were adjudications of guilt, we could not go behind it; but, as they are, they are not the best evidence. The witness, himself, would seem to me to be the best evidence there, and we object to them on that ground, Your Honors.

Judge Carroll: Have they been offered?

Mr. Sibley: Yes, sir.

Judge Carroll: Do you wish to be heard on that?

Mr. Sibley: Yes. I want to be heard. The only purpose in offering it is to establish that there is a dangerous situa- [fol. 98] tion existing because of the picket lines, and we will call a great many of these people to testify, before the case is over, and we just want to show the general situation that has arisen by reason of these pickets.

Mr. Warren: May I add this additional ground, Your Honor.

Judge Carroll: The objection will be sustained, without prejudice.

Mr. Sibley: All right. I might turn those back to the Sergeant where he will have them.

Judge Carroll: You can have them marked for identification, and they may remain here.

Mr. Sibley: I promised he could have them——

Judge Carroll: They are in your charge. They have not been marked.

Mr. Sibley: I will turn them back to the sergeant, because they are the original records, and somebody is going to be tried on them.

Judge Carroll: Are you all through with this witness?

Mr. Sibley: Yes.

(Witness excused.)

[fol. 99] Thereupon—ARMANDO PEREZ was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. Please state your name.
A. Armando Perez.
Q. Are you a resident of Florida?
A. Yes.
Q. What is your occupation?
A. I do waiter.
Q. Where are you employed?
A. Sherry Frontenac.
Q. Where?
A. Sherry Frontenac.
Q. How long have you been so employed?
A. For three or four years—three or four years.
Q. Were you working at the Sherry Frontenac Hotel at the time the picket line was set up?
A. Yes.
Q. You were?
A. Yes.
Q. Are you a member of the union?
[fol. 100] A. No.
Q. Was there ever a meeting of the employees of the Sherry Frontenac Hotel to determine, by secret ballot, whether a majority of such employees wanted to participate in the strike.

Mr. Brown: Your Honor, I object. He said he is not a

member of the union, and he certainly is disqualified from knowledge of the facts——

Judge Carroll: Overruled. He can answer as to whether or not he knows, of his own knowledge.

By Mr. Davis:

Q. Was there ever a meeting of the employees at the Sherry Frontenac?

A. I do not understand——

Judge Carroll: He does not understand your question.
Judge Cannon: Get an interpreter.
Mr. Davis: Question withdrawn.

By Mr. Davis:

Q. Since the picket line has been thrown, has anybody threatened you?

Mr. Brown: I object.
The Witness: Yes.
Mr. Brown: I object to the leading question.
Judge Carroll: Sustained.
Mr. Brown: I move the answer be stricken.

By Mr. Davis:

Q. Since the picket line, has the union or any member [fol. 101] of it interfered with your work at the Sherry Frontenac Hotel?

Mr. Brown: I object.

Mr. Gramling: Objection as leading. He is testifying for the witness, so all this fellow will have to do is nod.

Judge Cannon: This witness needs an interpreter.

The Witness: My brother is here.

Judge Cannon: His brother is here. He speaks Spanish.

Mr. Gramling: Oh, no, Your Honor. I object to his own brother being used as an interpreter.

Judge Cannon: Get your brother, then.

Mr. Gramling: This interpreter is an interested witness in the cause, and you are using him as the mouth piece of another witness. We do have another Spanish speaking—get me a couple of disinterested Spaniards.

Judge Carroll: Mr. Gramling, the type of questions that he is asking, I do not see why this man cannot—

Mr. Gramling: This man they are using has a police record for having assaulted our pickets.

Judge Cannon: Get your own interpreter.

[fol. 102] Judge Carroll: We will take a five-minute recess before proceeding.

(Thereupon a five-minute recess was taken, after which the following proceedings were had.)

Judge Carroll: Let us examine this witness and see whether or not an interpreter is necessary.

Mr. Davis: I think it can be done.

By Mr. Davis:

Q. Will you tell the Court what happened to you the night before last—what happened to you the night before last?

A. Shall I tell them about it? I going to the Singapore Lounge, and there is a dance over there, and I see Luiz Cabaliero.

Q. Who?

A. Luiz Cabaliero.

Q. Who is he? A. One of the fellows.

Q. Is he a picket?

A. Yes.

Mr. Brown: I object to that, Your Honor, as leading.

Judge Carroll: Overruled.

A. (Continued) And he talked to me, find me a job. I told you—you joined the union, and he say, no, and when I [fol. 103] got out of Singapore Room with my brother and two ladies, I opened the car, and I see through the car Muniz.

Q. Who is he?

A. One of fellow who hit me in left hand.

Q. Is he a picket?

A. Yes. He is in front of him, you know what I mean, and he hit me with a—he picked out of my car, pick out the tire—you have a tire—you have a flat tire—he pick out of my car and he keep it.

Q. You are talking about a tire lug? A. Out of my car.

Q. What did he do?

A. Hit me—hit the car first, and when I sit down, he open the door and hit me inside, right in left hand.

Q. This fellow, did you know him before?

A. At Sherry Frontenac.

Q. He used to work with you at the Sherry Frontenac?

A. Bus boy.

Q. He is a picket?

A. Yes.

Q. Now, I hand you three photographs, and ask you to examine them and state whether or not they accurately depict your automobile, after this altercation?

A. (Witness examining) My automobile is behind in [fol. 104] back.

Q. Is that your car?

A. Yes.

Q. Is that the way it looked when they got through with it?

A. Yes. When he break my car—is brand new one, a '53, and he——

Q. Is that the way it looked when he got through with it?

A. Yes.

OFFERS IN EVIDENCE

Mr. Davis: We offer in evidence the three photographs.

Mr. Gramling: I would like to ask a few questions concerning these photographs. They are offered in evidence, and may I propound a few questions in connection with it.

Judge Carroll: All right.

By Mr. Gramling:

Q. Armando, where did you say you were?

A. Sherry Frontenac.

Q. What was the name of the bar?

A. Singapore.

Q. Were you drinking with this fellow?

A. No.

Q. No?

[fol. 105] A. I with my brother.

Judge Carroll: You were asking him—

The Witness: I see another fellow, Luiz Cabaliero, and he see me, you know what I mean, and he see me, and he take —around there who worked in Sherry Frontenac. I call all the boys——

By Mr. Gramling:

Q. Where did this happen; where is your automobile? Where is your automobile parked in this picture?

A. It is parked——

Judge Carroll: You asked him two questions. You asked him where it happened and you——

Mr. Gramling: I want to ask him about both.

By Mr. Gramling:

Q. Where was your automobile when this happened to it?

A. In front—the top.

Q. Where was your automobile—in front of the Singapore?

A. Behind the Singapore—how the fellow hit me over here.

Q. How far is the Singapore from the hotel where you work?

A. Forty blocks—65th and Collins, and the Singapore is 23rd and Collins.

Q. About 40 blocks away?

[fol. 106] A. Yes—42 blocks.

Mr. Gramling: Your Honor, I object to the introduction of these pictures as depicting something that happened to an automobile in back of a bar, arising out of something that arose in a bar that is 40 blocks away from the scene of any picketing that is sought to be enjoined here.

Those kind of bar room brawls happen all over Miami Beach, or in colored town, or every other place.

It has no connection with any labor dispute.

Judge Carroll: Objection overruled; file them as one exhibit.

(Three documents just referred to were thereupon marked Plaintiff's Exhibit No. 8, as one exhibit.)

By Mr. Davis:

Q. Armando, after it happened, did you call the police?
A. I go inside Singapore Lounge and I call the police.
Q. Did you tell them the names of these fellows?
A. Yes; and he go right to the union and find the two fellows.
Q. Where?
A. Union—union hall.
[fol. 107] Q. Where is that?
A. Alton Road.
Q. Miami Beach?
A. Miami Beach.
Q. Did you find those two men at the Union Hall with the policeman?
A. Yes.

Mr. Brown: I object. I wonder who is doing the testifying—counsel or the witness. This witness did nothing but nod——

Judge Carroll: He is asking leading questions because of his unfamiliarity with the language, apparently.

Mr. Brown: We should not be prejudiced by that, Your Honor.

Judge Carroll: See if you can avoid leading questions.

Mr. Davis: I will do my best.

By Mr. Davis:

Q. I ask you whether or not these two men were found by the policeman and you at the Union Hall?

Mr. Gramling: If Your Honor please, I object to that, because now this goes back to our opening statement of this afternoon, as to what case which one of you chancellors—[fol. 108] do any of you gentlemen know which case is now under discussion?

Judge Floyd: The Sherry Frontenac.

Mr. Gramling: There is not one iota of testimony that anything pertaining to the picketing at the Sherry Frontenac is involved in this matter here.

Judge Floyd: I assume counsel wants to bring that out.

Mr. Davis: May I call your attention to the fact that this

witness has testified that the men who assaulted him in his automobile were former employees at the Sherry Frontenac, and were in the picket line there.

Mr. Gramling: It could not have been in the picket line, because he testified it was at the Singapore, 40 blocks away.

The Witness: He work—he waits for me over there.

Judge Carroll: Objection overruled. Is there a question pending?

Mr. Davis: Yes; I think there is a question. Read it back.

(The following question was thereupon read by the Reporter as above recorded:

"Q. I ask you whether or not these two men were [fol. 109] found by the policeman and you at the Union Hall?")

By Mr. Davis:

Q. When you went to the Union Hall, did you find these two men there?

A. Yes.

Q. Now, before this happened, this night before last, was there any other occasion that anything happened to you?

A. One of the bell boy at the Sherry Frontenac, he told me, "You got a knife?" I said to him, "What?" He said, "You use your knife"—in front of Sherry——

Q. I do not understand what you are talking about now. When did this happen?

A. Saturday.

Q. When?

A. I think Saturday.

Q. Last Saturday?

A. Yes.

Q. What happened?

A. I go inside Singapore—you know what I mean—and I see four—I see Luiz Cabaliero and he told me, you want to find me a job—you know what I mean——

Q. We are talking about—I am talking about did anything happen to you before the Singapore?

A. That is what I told you.

[fol. 110] Q. Tell me about it again louder and clearer.

A. In front of the Sherry Frontenac, I went to get something from my car.

Q. Were you working at the Sherry Frontenac then?

A. Yes.

Q. What time of day was it?

A. It was ten to one.

Q. What time did this incident happen?

A. In—after four o'clock.

Q. What happened?

A. I got out—I want to get one of my clothes in my car—you know what I mean—and I go to bell boy and he told me, "You got a knife." I told him, "No." He told me, "You better use it."

Q. Who was this bell boy?

A. It is big fellow named Louis.

Q. Was he in the picket line?

A. Yes.

Q. What did he say to you?

A. He told me, "I better use a knife."

Q. Better use a knife.

A. Yes.

Q. Use a knife to do what?

A. Maybe he hit me or something to protect myself.

[fol. 111] Mr. Brown: I object to the "maybe" in the answer and the statement following.

Judge Carroll: What is the objection?

Mr. Brown: He said, "maybe this" and "maybe that." I object to his statement of conjecture.

Judge Carroll: Objection sustained; and answer stricken as not responsive.

By Mr. Davis:

Q. Was there any time that anybody made any threats?

A. No; only this time.

Mr. Brown: I object to the question. There is no indication that this conversation was of a threat of any kind. The witness himself said he does not know what the conversation meant "maybe this" and "maybe that".

Judge Carroll: Overruled.

Mr. Davis: He testified, and the Court can decide.

By Mr. Davis:

Q. Was there any other occasion? A. No.
Q. That was the only one?
A. No.

Mr. Davis: You may inquire.

Cross examination.

By Mr. Benjamin Gettler:

[fol. 112] Q. Mr. Perez, you say you are a waiter at the Sherry Frontenac?
A. No. I work in—I work bus boy, maybe two years.
Q. When did you become a waiter?
A. Six or seven days.
Q. Six or seven days?
A. Yes.
Q. When the picketing started?
A. I do three or four times in bartender, too.
Q. Since the picketing started, you moved up from a bus boy to a waiter?
A. I do it before, one or two times—bartending of, and I do it and somebody quit, and I do bartender.
Q. You had been regularly a bus boy?
A. I mean, first bartender—somebody out, and I work —you know what I mean.
Q. Your normal job was a bus boy's job?
A. Yes.
Q. Bus boy.
A. Yes, and I know how to do bartending and waiter, too.
Q. Where do you live?
A. 4202 North Miami Avenue.
Q. Since the picketing started, are you still living there or are you living in the hotel?
[fol. 113] A. I still living, and one union fellow called my mother——

Mr. Gettler: I object.
Judge Carroll: Answer the question.

By Mr. Gettler:

Q. Mr. Perez, last night, when you finished working at what time?

A. 1:00 o'clock bar closed.

Q. 1:00?

A. Tuesday night the bar closed, and I think they—this happened to me on Tuesday, because I got off early.

Judge Carroll: He asked what time——

Mr. Gettler: I will withdraw the question.

By Mr. Gettler:

Q. On Monday you went to work at the Sherry Frontenac?

A. Yes.

Q. What time did you go to work?

A. I work—another fellow don't want to work—I go 8:00 o'clock in morning.

Q. What time did you quit work that night?

A. I work eight hours, after I come back—my job—

Q. You finished working 4:00 o'clock Monday afternoon?

A. Yes.

[fol. 114] Q. And after you finished working, where did you go?

A. No place. Tuesday, this happened to me, the accident, and I remember——

Q. Let us go over to Tuesday. I have the wrong day. On Tuesday, what time did you start work at the Sherry Frontenac?

A. Tuesday, I work in dining room 4:00 o'clock.

Q. What time did you go to work?

A. 4:00 o'clock.

Q. In the afternoon?

A. Yes.

Q. When did you finish working?

A. 9:00 o'clock; when dining room close.

Q. 8:00 o'clock?

A. 9:00 o'clock, in night.

Q. 9:00 o'clock in the evening, and then where did you go? Did you go to the Singapore Bar?

A. I go over with three or four fellows, and go to——

Q. You got three or four fellows, and you went to the Singapore Bar?

A. Yes.

Q. This was 9:00 o'clock in the evening?

A. 10:00 o'clock or 10:00 or 11:00.

[fol. 115] Q. This was 10:00 o'clock?

A. 10:00 or 11:00 o'clock.

Q. Who was with you?

A. My brother.

Q. Who else?

A. Two fellows I give a ride over there. And two girls.

Q. What did you do at the Singapore Bar?

A. Dance. What do you do?

Q. Did you drink?

A. I drink one beer, that is all—one or two beers—one or two beers. I do not drink too much.

Q. How long were you there?

A. Well, to 4:00 o'clock.

Q. Until 4:00 o'clock?

A. Yes.

Q. From 10:00 o'clock in the evening until 4:00 o'clock in the morning, you had one beer?

A. One or two beers.

Q. Now, how much whiskey did you have?

A. I do not drink whiskey.

Q. You do not drink whiskey?

A. No.

Q. Did you start—when did you start having one or two beers?

[fol. 116] A. No. I wait a little while before I drink. I only go for a dance—Spanish dance.

Q. And in between, you were drinking beers?

A. Yes.

Q. For a period of six hours?

A. Only since 11:00 o'clock to 4:00 o'clock in the morning.

Q. Did you have any women with you there?

A. Two ladies that stayed at the Sherry Frontenac.

Q. You took two ladies?

A. She go along; I go separate.

Q. You met them there?

A. Yes. I find them——

Q. You met them there?

A. Yes.

Q. Was she drinking with you?

A. What? I sit down at table and I find her there.

Q. Were other fellows with you drinking also?

A. Not the other fellows. They go to the bar, and I sit down at the table.

Q. Did you sit down at the table by yourself, or sat down with a girl?

A. Yes.

Q. And when did you first see these two men that you [fol. 117] spoke of, Mr. Muniz and Mr. Cabaliero?

A. I work in Sherry Frontenac before——

Q. Did you see them at the Singapore that evening?

A. Yes. One—Cabaliero and outside.

Q. Cabaliero you saw inside?

A. Yes.

Q. What time did you see him?

A. A quarter after 4:00.

Q. A quarter after 4:00 in the morning?

A. Yes.

Q. You had already been there for six hours when you saw Cabaliero?

A. Yes.

Q. You had not seen him before?

A. No; only then, and he got—when he got out to Singapore, he called another boy and another wait for me inside in the door.

Q. Did you see him come to the Singapore?

A. When; who?

Q. Cabaliero?

A. Yes; he talked with me.

Q. He came in about 4:15?

A. Yes.

Q. And he was looking for you?

[fol. 118] A. And he say, you find me a job, and I told, you union; he said, no, and when I—everything happened—I go to detective and I find him in the union—you know what I mean.

Q. Now, at 4:15, you saw Mr. Cabaliero, and you spoke to him; is that right; you spoke to Mr. Cabaliero?

A. He talked to me.

Q. Then, did he leave you?

A. He left, and another fellow—they go to Singapore and he wait outside behind.

Q. Did you have an argument with him?

A. No.

Q. No argument?

A. I got with my brother.

Q. You finally decided to leave?

A. Yes. I sit in car, and he got in car and Muniz opened the door, and he went to hit here and here, in the left hand, you see.

Q. Now then, after you left the Singapore Bar, you said you had this altercation, and then you said you called the police?

A. I go inside Singapore and call for the police, and tell —call one detective to go with me outside, and he go, and I go to union and he find the two fellows. I knew their names before.

[fol. 119] Q. Did you go with him?

A. Yes. I give him names before.

Q. Did you tell him what to do?

A. I did not tell him what to do. I do not know—I do not tell where to go.

Q. You did not tell him?

A. I tell him two fellows belong to union—one belong to union, I know he belong to the union, and the two, and he go right there.

Q. Did you go to the Union Hall with the policeman?

A. Yes.

Q. Did you walk around the Union Hall?

A. Yes.

Q. Were there a lot of people there?

A. I do not care——

Q. Were there many people there?

A. Hundreds.

Q. Hundreds?

A. Yes.

Q. One hundred?

A. Yes.

Q. And did you look around at the people?

A. Yes.

Q. And you picked out the——

[fol. 120] A. Luiz Cabaliero and Muniz.

Q. Did you——

A. I give names to him before go there.

Q. Did you pick out Luiz Cabaliero right away?

A. No. Another fellow hit me—fellow hit me—Muniz—there is the guy that hit me.

Q. Did you pick out the union men just right away—Muniz?

A. Yes; and another fellow, when he see me, he go back, and he go straight down, and I told him, the detective.

Q. After you picked out Muniz, when you went out to the police car with Muniz?

A. Who——

Q. Didn't you go out to the police car with the policeman?

A. Another place, and Muniz got in another car with the police.

Q. He got in a car, and you said, "Wait a minute, there are some more; we have to get some more."

A. Luiz Cabaliero I remember.

Q. Didn't you say, "Several more."

A. I told him in Singapore.

Q. Didn't you tell the police there are several more inside; we have to go back?

[fol. 121] A. Maybe eight boys that work, wait for me. I see the guy that hit me, and the car—Luiz Cabaliero called another fellow.

Mr. Warren: Your Honor, we respectfully move the Court to strike this witness' testimony on the following grounds:

1—that his testimony is absolutely—it fails to prove or tend to prove any of the allegations in the original bill of complaint or in the amended bill of complaint, or supplemental bill of complaint.

The original bill of complaint was filed on April 18th. As I understand this witness' testimony, the event he describes occurred on the night of April 26th, last Tuesday.

The supplemental or amended bill of complaint was filed on April 26th, according to my understanding.

So none of these acts could have occurred before either of those bills of complaint were filed. It is my understanding that you cannot support bills of complaint by proof of acts that occurred after they were filed.

I know that was the rule regarding divorce bills of complaint.

[fol. 122] I further wish to move to strike it on the grounds——

Judge Carroll: Just a moment. All right. Go ahead.

Mr. Warren: We just rest on that grounds, (sic) Your Honor, that his testimony, whatever it means, relates to a date subsequent to the filing of both of the complaints, so it could not support any of its allegations in it.

Judge Floyd: When did it happen?

The Witness: On Tuesday.

Judge Cannon: What does the plaintiff say on that.

Mr. Sibley: I understand——

Judge Floyd: Ruling is reserved.

Mr. Sibley: The supplemental bill was filed on the 27th.

Judge Floyd: In the Sherry Frontenac action.

Mr. Sibley: That is the one that is involved.

Mr. Gramling: Pardon me.

Judge Floyd: I have the original file here.

Mr. Gramling: We received these copies that show that the oath before the Notary Public is dated the 26th.

Judge Floyd: I reserve ruling on that.

[fol. 123] Mr. Gramling: For the time being, we will let the testimony stand, even though it is obvious that it occurred after the amended bill was sworn to.

Mr. Warren: Your Honor, we object and move to strike it on the further ground, that it is almost incomprehensible and merely obfuscating.

By Mr. Gettler:

Q. After you left the police about 4:30 in the morning, on Wednesday morning, didn't you go out and round up a gang of fellows?

A. I did not have a chance.

Judge Carroll: I thought you were finished and you moved to strike all of the testimony.

Judge Floyd: I believe counsel started back——

Mr. Gettler: I started to ask a question——

Judge Floyd: And in the meantime, Mr. Warren saw an opportunity to regain the floor, and this witness is not through by this counsel.

By Mr. Gettler:

Q. Is it not true, that after you left the police, about 4:30——

A. 8:00 o'clock, they take him to bring him in Sherry Frontenac.

Q. After you left the police, on early Wednesday morning, after these events that you described, is it not true [fol. 124] that you and your brother went out and rounded up a gang of four other fellows, and went over to the Sherry Frontenac and attacked the pickets?

A. What time is that trouble over at the Sherry Frontenac?

Q. I am speaking after you left the police.

A. What time is the trouble over in Sherry Frontenac, the fight in the Sherry Frontenac?

Q. Will you answer the question?

A. Call the detective—what a minute—I had a detective to 8:00 o'clock in the morning. I had the police to 8:00 o'clock. There was a detective——

Judge Cannon: Answer his questions as asked. Proceed.

By Mr. Gettler:

Q. After all of this trouble that you just described, and after you left the police, is it not true that you and your brother went and got four other boys and a gang of you went up to the Sherry Frontenac and attacked the people walking on the picket line?

A. No.

Q. Is that true or not?

A. I wait for the police.

Judge Floyd: He was with the police until 8:00 o'clock in the morning.

Judge Cannon: Strike all of that.

[fol. 125] By Mr. Gettler:

Q. Were you not arrested for attacking the pickets at the Sherry Frontenac?

Judge Cannon: It calls for a conclusion.

By Mr. Gettler:

Q. Were you arrested?
A. No; you are wrong; you are wrong.

Mr. Gettler: That is all.
Mr. Davis: Come down.
Judge Cannon: Any further questions or——

(Witness excused.)

Thereupon—EILEEN ROGAN was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. Please state your name.
A. Eileen Rogan.
Q. Where do you live?
A. Chicago, Illinois.

Mr. Warren: Pardon me a moment. Did Your Honors indicate what your plans are regarding going further?
Judge Carroll: What is your estimate as to time?
Mr. Davis: It is hard to say. I have this particular wit-
[fol. 126] ness, and I think I will be through in five minutes.
Judge Carroll: Do you contemplate finishing by 6:00 o'clock?
Mr. Sibley: No, sir; we cannot.

(Informal discussion ensued off the record.)

Mr. Warren: Will you come up, please, Mr. Sibley?

(Counsel thereupon approached the bench at which time an informal discussion was had off the record, out of the hearing of the Reporter.)

Judge Carroll: Proceed.

By Mr. Davis:

Q. Please state your name again.
A. Eileen Rogan.
Q. Where is your home?
A. Chicago, Illinois.
Q. What do you do there?
A. I am secretary in a legal office in the Quartermaster's Depot there.
Q. You work for the Army?
A. Yes.
Q. What was the occasion for your being in Miami Beach?
A. Vacation.
[fol. 127] Q. How long was your vacation?
A. Well, I am going home tonight. I have been here for 11 days.
Q. Where did you stay?
A. Sherry Frontenac.
Q. Did anything unusual occur to you on the evening of last Tuesday, or the early morning of last Wednesday?
A. Yes.
Q. Will you tell the Court what happened?
A. Well, my girl friend and I went to the Singapore Lounge, and we met these boys that were from the hotel, and we were dancing with them there, and two of the boys offered to give us a ride home, and they had their car parked in back, and we just got into the car, when someone came up, and they started smashing windows, and there must have been at least three—I cannot say how many there were. There was one on each side, and somebody came in the back window and broke one of them, and one of them opened the door and started to hit the driver with a club, and then they got out and ran, and that is all.

Mr. Gramling: I would like to renew the motion of Governor Warren—the same motion as was made to the testimony of the preceding witness, at which I believe rul-
[fol. 128] ing was reserved. She testified this happened——
Judge Carroll: May I suggest, until the testimony is completed, that the ruling was reserved, anyhow. It will be a similar ruling.

By Mr. Davis:

Q. Who was the driver of the car?

A. Armando Perez.

Q. Is that the man that testified just before you did?

A. Yes.

Q. Was there any argument or conversation before they started beating on the car?

A. No; there was nothing. We were just sitting there, and all of a sudden the windows started to crash.

Q. When did you first see these men that approached the car and smashed the windows?

A. Well, you could not really see the windows—they were shattered, and the car door was open, and he did not have a chance to close the door, and the one who was hitting him, and I did not look to the other side.

Q. What did these people do when they hit the window?

A. They ran.

Q. Did you recognize any of them?

A. No; I did not.

[fol. 129] Q. Were you frightened?

A. Well, yes.

Mr. Davis: You may inquire.

Mr. Warren: Your Honor, we move to strike her testimony, on the grounds it relates to events subsequent to the filing of both the original and the amended bills of complaint; and on the further ground that her testimony does not tie in at all with anything relating to the Sherry Frontenac. She saw this condition out there, but she cannot tie it in with anything that relates to the Sherry Frontenac and the picketing.

While the testimony of the other man conceivably—only conceivably—might have some relevancy here, there is absolutely a gap between her testimony and anything that happened there, totally unrelated and absolutely isolated.

All that this young lady knows, or for all that she said, that the events could be totally unconnected with any picketing at the Sherry Frontenac.

I have not expressed it very well, but Your Honors can discern what I am driving at here.

Judge Carroll: Same ruling as to the other testimony. The ruling is reserved.

[fol. 130] Mr. Davis: I tender the witness.

Cross examination.

By Mr. Gettler:

Q. Were you sitting in the car when you first saw the men attacking the car?
A. Yes.
Q. Were the windows closed?
A. I think so; yes.
Q. Were you able to recognize any of the men at all?
A. All I know, one was short. I could not recognize him.
Q. It happened quickly and suddenly?
A. Yes.
Q. So, no one in your car could have recognized them?
A. If they knew them, they could have recognized them. I think Armando knows—would know who was hitting him.
Q. How long have you been at the Sherry Frontenac?
A. 11 days.
Q. Had you been there before the picketing started?
A. No. It was on when we came there.

Mr. Gettler: That is all.

(Witness excused.)

[fol. 131] Thereupon—ARLENE WILSON was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. Please state your name.
A. Arlene Wilson.
Q. Where is your home?
A. Chicago, Illinois.
Q. Are you a friend of Miss Rogan, the lady who just testified?
A. Yes, I am.
Q. You all work at the same place?
A. Yes.
Q. You both work for the Army, in Chicago?
A. Yes.

Q. You came down here with her?

A. Yes, I did.

Q. Did you accompany her, on last Tuesday evening or early Wednesday morning?

A. Yes, I did.

Q. Were you in the car when this altercation occurred?

A. Yes, I was.

[fol. 132] Q. Will you tell the Court briefly what you observed?

A. Well, we no sooner got in the car, and I was in the front seat with Armando, and I happened to be turning around, getting a cigarette from his brother, so I did not see anyone come up. All I heard was the glass, and I just hid my head, and the first thing I realized, somebody had the door open, and was standing with a coke bottle. He did not use the bottle, but he was holding it, and I do not remember too much about it.

Q. Is that on your side of the car?

A. Yes; I was sitting in the front seat.

Q. What happened after this occurred?

A. What happened after?

Q. Yes.

A. Well, I ran out of the car. I left the three of them in the car and by the time I turned around to see what was going on, they had already left. Armando was gone. He went to get the police, and Eileen and Roney were getting out of the car, but I do not know what you want me to tell you——

Judge Carroll: Speak louder, please.

By Mr. Davis:

Q. Did you go home?

A. Yes. Roney and the two of us—friends—and Eileen [fol. 133] and I went home in a cab, and they left us.

Q. Where do you live?

A. Chicago, Illinois.

Q. I mean, at Miami Beach.

A. Guest of the Sherry Frontenac.

Q. When are you leaving?

A. On Saturday morning.

Mr. Davis: That is all.
Mr. Gettler: No questions.

(Witness excused.)

Mr. Warren: Your Honor, we make the same motion as to her testimony, as we did to the other companion, on the same grounds.
Judge Carroll: Same ruling.

Thereupon—PETER PAPPAS was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. Please state your name.
A. Peter Pappas.
Q. Are you a resident of Florida?
A. Yes.
[fol. 134] Q. What is your occupation?
A. Waiter.
Q. Where?
A. I am employed at the Sherry Frontenac.
Q. How long have you been so employed?
A. Since the middle of December.
Q. December, 1954?
A. Yes.
Q. Were you working at the hotel prior to the time the picket line was set up?
A. Yes, I was.
Q. Was there, to your knowledge, ever a meeting called of the employees to determine, by secret ballot, whether they would participate in a strike?
A. Not to my knowledge.
Q. Are you a member of the union?
A. No.
Q. On the evening of April 24th, did anything unusual occur to you while you were working? I believe that would be last Saturday evening.

A. Yes. That was the night we—a few of my friends and I went out and got a few drinks at the bar.

Q. Speak up a little louder.

A. A few of my friends and I went out to the bar for a little while, to have a drink, and about 1:30 in the morning [fol. 135] I was approached.

Q. By whom?

A. By one of the old bartenders from the Sherry Frontenac.

Q. What is his name?

A. His name is Mike. I do not know what his last name is.

Q. Did you ever see him in the picket line?

A. I think he is a captain.

Q. A captain of the pickets?

A. I think so.

Mr. Warren: If I may make a motion at this time, we move to strike it. He thinks he is.

The Witness: He told me he was the captain.

Mr. Warren: I withdraw the objection.

By Mr. Davis:

Q. What did Mike say to you?

A. He wanted me to—he wanted to take me out and make sure that I should be out of the hotel before Thursday or today, and he said nobody would bother me before Thursday; but after Thursday, he could not promise anything.

Q. Now, to the best of your recollection, exactly what did he say to you on that occasion; what were his exact words, as best you can recall.

Mr. Brown: I object, on the ground it is hearsay testimony. This party that he is quoting, is not a party to this [fol. 136] action.

Mr. Davis: He is one of your people.

Mr. Brown: We ask to intervene, and we have not been granted that privilege yet.

Judge Carroll: Overruled.

By Mr. Davis:

Q. Will you tell us exactly what Mike said to you, as best you can recall?

A. Well, he called me to the side. He was with one of the other girls in the car, and as I approached the car, he called me and he said he would like to talk to me.

So he got out of the car and he walked over to my car with me, and he told me, he said, we are both Greek; we should stick together, and I should walk out of the hotel; I should not strike against him, and that I should be out before Thursday, because Thursday they had a big meeting.

I presume at the meeting they are having today—and that I should be out of there before Thursday; that after Thursday, he could not promise me that nothing would happen to me, but up until Thursday, he said nothing—that they had orders nobody should touch us or bother us.

Mr. Warren: Your Honor, I move to strike that on the ground it does not prove any violence. It is not a threat of violence, and it is nothing more than just a piece of negative [fol. 137] piece of testimony regarding what might happen after Thursday. It has no probative weight or force of any kind, and as I understand it, they are relying on violence here, and I do not reckon anybody could promise me assurances of what would happen after Thursday.

I do not know how to describe that. That does not sound to me like something that ought to be considered by Your Honors.

Judge Carroll: Motion denied.

Mr. Davis: You may inquire.

Cross examination.

By Mr. Brown:

Q. What hotel are you working at?

A. Sherry Frontenac.

Q. How long have you worked there?

A. Since December—the middle of December, 1954.

Q. Where have you worked before?

A. At the Nautilus.

Q. Now, sir, who was this person that you were talking about, that told you these things about what would happen after Thursday?

A. Mike. He was a bartender. I do not know what his last name is.

Q. The only name you know is Mike?

[fol. 138] A. That is all.

Q. Do you see him in the Court room?

A. No, sir; he is not here.

Q. How do you know Mike is a member of the Union?

A. He told me that he was.

Q. When did he tell you?

A. The night he spoke to me.

Q. What night was that?

A. The night of the 26th. I imagine that is what they said the date was.

Q. On the 26th of April, he told you he was a member?

A. I said I do not know what day it was. I do not remember what day it was.

Q. You do not remember what day he told you?

A. It was on a Saturday night.

Q. It was on a Saturday night?

A. Yes.

Q. Last Saturday?

A. Yes; last Saturday.

Q. He told you that you will have until Thursday—the coming Thursday—to get out of the Sherry Frontenac?

A. That is right.

Q. And did anything happen to you?

A. Nothing happened to me.

[fol. 139] Q. You have not been bothered?

A. Yes; I have.

Q. By what?

A. By several of the boys around.

Q. Have you been struck or attacked in any way?

A. No.

Q. You have gone to work every day?

A. Every day.

Q. Did anybody hold you or keep you from going to work?

A. Nobody.

Q. Did you ever see any fights on the picket line at the Sherry Frontenac?

A. No.

Q. You are there every day?

A. Well, the fights did happen—it was not in the daytime.

Q. You were there every day?

A. Yes; I am there every day.

Q. What time did you come to work?

A. 8:00 o'clock in the morning.

Q. Was that when a number of other employees go to work?

A. Yes.

Q. Did you go with them?

[fol. 140] A. I go in by myself.

Q. What time do you quit work?

A. 12:00 o'clock.

Q. At night?

A. Noon—A. M. or P. M.

Q. So, you work from 8:00 in the morning until noon, and then what do you do?

A. From 5:00 to 9:00.

Q. And you come back and work from 5:00 to 9:00?

A. Yes.

Q. And there are a number of others who do the same thing?

A. Yes.

Q. They all come and go?

A. At the same time? No, they do not.

Q. There are a number of others that work the same hours.

A. They all do work the same—all waiters and waitresses.

Q. So, they are all arriving and leaving at the same time?

A. Part of them stay in the hotel.

Q. Part of them stay in the hotel?

A. That is right.

Q. There are some others go home?

A. Yes.

[fol. 141] Q. And there is no difficulty; they have all come and left as they pleased?

A. With a little foul words, here and there.

Q. Have you used any foul language?

A. I never used any foul language. Why should I curse somebody out?

Q. That is excellent.

Mr. Brown: That is all.

Redirect examination.

By Mr. Davis:

Q. You come to work by yourself, you say?
A. No, sir.
Q. With whom?
A. Benjamin.
Q. Who is he?
A. Beatrice Benjamin.
Q. Who is she?
A. She is a waitress.
Q. You bring her to work?
A. Yes.
Q. How about these people that Mr. Brown brought out that stay in the hotel? Do you know why they stay in the hotel?
A. I know——

Mr. Brown: I object.
[fol. 142] The Witness: Yes, I know why.
Mr. Brown: I object; the best evidence are the people themselves as to what is in their minds. He cannot testify to that.
The Witness: I know.
Judge Carroll: Sustain the objection.
Mr. Davis: I would like to make this proffer of proof, that if the witness were permitted to testify, that he would testify, in view of his own knowledge that a number of employees in this hotel, stay in the hotel, and do not go home because of the incidents that they have witnessed in the picket line.
Mr. Brown: Now, Your Honor——
Judge Carroll: The proffer is denied.

By Mr. Davis:

Q. Was there any other occasion, Mr. Pappas that you were approached by any member of the picket line?

Mr. Gramling: I object, Your Honor. He has completed

with this witness, and we have crossed, and now if there is any redirect examination, in the scope—but now if we keep on continuing under a brand new——

Mr. Davis: I will withdraw the question. Come down. We will save more time.

(Witness excused.)

[fol. 143] Thereupon—HERBERT BULLARD was called as a witness on behalf of the plaintiff and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. Please state your name.
A. Herbert Bullard.
Q. Where is your home?
A. I live here, now.
Q. How long have you been a resident of Florida?
A. About six months.
Q. What is your occupation?
A. Bell boy at the Sherry Frontenac.
Q. How long have you been so employed?
A. I have been there about a week and a half.
Q. Now, on the morning of April 26th, did anything unusual happen to you while you were working there?
A. Yes, sir. There was one of the other bell boys and myself—we went to the Bel-Aire to bring some people over to the Sherry Frontenac, and while we were there this guy, which I saw him conversing with several of the pickets, and which was here just a couple of minutes ago started to take our pictures, and we did not know for sure what the purpose of it was for, and then he followed us back towards the hotel, and called us scabs and scads [fol. 144] and said that we would never work in Miami again, and then he took several of the pictures, and then as we got back to the hotel, we had another call to make so we asked Mr. Paul, one of the managers there to go back with us, and he did, and the same fellows took the picture again, and that one incident, and one other time we went

next door to the apartments, and some other fellow followed us up and down the street, and called us different names.

Q. Do you know who he was?

A. No. I would not know him. I did not pay too much attention to him.

Q. Did you ever observe him in the picket line?

A. Well, he was with them. I saw him conversing.

Mr. Davis: That is all.

Cross examination.

By Mr. Brown:

Q. You were in Miami six months?

A. About six months.

Q. Where did you come from?

A. Charlotte, North Carolina.

Q. And you have been at the Sherry Frontenac for a week and a half?

A. Yes.

Q. Where (sic) you before that?

A. Sun City Motel.

Q. You said that your picture was taken?

[fol. 145] A. Yes.

Q. A number of times?

A. Yes.

Q. It did not harm you, did it?

A. Well, it all depends on what the purpose of the picture was. I did not know what they were for.

Q. Do you know of any harm that came to you by reason of that picture being taken?

A. So far, none; no, sir.

Q. There was no physical harm that came to you whatsoever, was there?

A. Not physically, but maybe mentally.

Q. You were harmed mentally?

A. Well, wouldn't you be, if you saw him——

Q. Tell me——

Mr. Sibley: Let him answer the question.

Mr. Brown: I was asking a question.

By Mr. Brown:

Q. Tell me what mental harm you were suffering?
A. Not being too familiar with the strike, yes; I was a little worried.
Q. Because your picture was taken?
A. Well, of several of the other guys around there, that I have heard or heard them talking.
Q. Tell us what happened to you; not what happened——
[fol. 146] A. As I said, mentally, yes. I was worried.
Q. How are you mentally, today?
A. Well, still worried; yes, sir.
Q. About the same pictures?
A. About the pictures and the strike; yes, sir.
Q. Were you in the Court room when pictures were taken here today?
A. Yes.
Q. Were you worried?
A. I knew the purpose of those.
Q. You knew the purpose of that?
A. Yes.
Q. What was the purpose of the other pictures that were taken?
A. That I do not know.
Q. And you are worried about it?
A. Yes.
Q. You are worried because you do not know?
A. That is right.
Q. You have been going to work every day?
A. Yes, sir.
Q. You are not living in the Sherry Frontenac, are you?
A. No.
[fol. 147] Q. Has anybody prevented you from going to work?
A. No, sir.
Q. Has anybody attacked ... you went in?
A. No, sir.
Q. Or when you left?
A. No, sir.

Q. It was pretty peaceful?
A. Yes, sir.

Mr. Brown: That is all.
Mr. Davis: That is all. Come down.

(Witness excused.)

Thereupon—JOFFRE NASSOUR was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. Please state your name.
A. Joffre Nassour.
Q. You are a resident of Florida?
A. Yes, sir.
Q. What is your occupation?
A. Cook.
Q. Where do you work?
[fol. 148] A. Casa Blanca Hotel.
Q. How long have you worked at the Casa Blanca Hotel?
A. About four years.
Q. You were working at the Casa Blanca Hotel at the time the picket line was set up?
A. What?
Q. Were you working there at the time the picket line was put up?
A. No. I was coming in to work, and they formed a picket line about five or ten minutes before I walked in.
Q. You were working there before that time?
A. Oh, yes.
Q. You were employed?
A. I was there about four years.

Judge Crawford: Is that the Casa Blanca Hotel?
Mr. Davis: Yes, sir.

By Mr. Davis:

Q. Are you a member of the union?

A. No, sir.

Q. Was there ever a meeting of the employees of the Casa Blanca Hotel determined by secret ballot where a majority of such employees would want to participate in a strike?

[fol. 149] A. Not that I know of.

Q. If there had been, at the Casa Blanca, what would you have—would you have known about it?

A. I am sure I would.

Mr. Gramling: Please speak up.

By Mr. Davis:

Q. Since the picket line was thrown up, has anything unusual occurred to you and your work?

A. Well.

Q. Has anything happened to you?

A. Since the picket line, I stayed in the hotel.

Q. You were living in the hotel and staying there?

A. Since the first day they started picketing.

Q. Why?

A. Because I do not want no trouble—what will happen.

Mr. Gramling: If Your Honor please, I object to this as to why does he stay at the hotel; why he stays in a wigwam is of no consequence—if what we are trying to do is explore a frame of mind.

That certainly has nothing to do with the specific allegations made in the complaint, and the amendment to the complaint.

[fol. 150] In other words, he can contribute nothing to it, or to the issues to ask a man why he stays in a hotel.

Judge Carroll: Overruled.

Judge Floyd: He said that he did not want any trouble.

Mr. Warren: Did he say——

Judge Cannon: And then he started to say he knows those guys.

The Witness: I say, I knew what would happen.

By Mr. Davis:

Q. Before the picketing started at the Casa Blanca, did you go down to work temporarily at the Saxony Hotel?

A. Yes.

Q. Did anything happen to you there?

A. Well, we had a—to go through—I had to go through—

Q. Louder.

A. I had to go through the front, because they were picketing, and I did not want to go through the side entrance. I did not—I wanted to go through the front entrance figuring that they may figure me as a guest. I did not want any trouble from them.

Q. What happened, if anything?

A. Nothing specifically there.

[fol. 151] Q. Now, on Friday after the picketing started at the Saxony Hotel, did anything happen to you then?

A. At the Saxony?

Q. At the Casa Blanca?

A. Well, I was—the day that I was going into the Casa Blanca and they started the picketing, and I was walking down, and just as I got to the picket line, I was pointed out.

Q. Who pointed you out?

A. One of the union men.

Q. Do you know who he was?

A. Yes.

Q. Who?

A. Pinky.

Q. Did you know Pinky before?

A. Yes.

Q. How did you know him?

A. He was a waiter at the Casa Blanca.

Q. Is he one of the picket captains?

A. Evidently he must be.

Q. If you know—is he in the picket line; was he in the picket line then?

A. I think I saw him picketing once.

Q. Does he work with the pickets?

A. Yes.

[fol. 152] Q. What did he say or do?

A. Well, just as I approached the picket line, he said, "That is the guy," and pointed at me, and some other person and I went across the picket line, and somebody yelled over to me and said, "Hey," and I turned around and just as I turned around, a fellow snapped my picture.

Mr. Warren: Your Honor, I move to strike that testimony, on the ground that it does not tend to prove anything, as to whether it is a right or not that they take your picture, whether you want them to or not.

I do not know of any harm. Most people make an effort to get their picture taken. I know I do. I want to get it taken more than once and that does not prove anything at all. I move to strike it, on the ground it just does not prove a thing.

Judge Carroll: Motion denied.

By Mr. Davis:

Q. Joffre, on the morning of April 19th, did anything happen to you; that is, when you went home? You testified, on an occasion, on Wednesday, now, four days after that; did anything happen to you?

A. Well, I was working in the coffee shop, and I worked pretty hard, and three days, and I do not know how many days later, but I was staying in the hotel all along, and [fol. 153] so I was doing all work, and I was bussing and doing—run to the store room, and I was doing all work, and I was tired, and I was wearing the same clothes all the time, so I figured there was about 10:00 or 10:30—I forget what time—around that time, and I figured I would take a buddy across the street, and I would go ahead and get a change of clothes, and maybe bring a few things back with me, and keep them in my room in the hotel, so I walked up the coffee shop steps and walked north, under the Casa Blanca sidewalk, and I must have gotten about one-third of the way, and one of the captains or—I do not know who he was—I know him from the hotel—he used to be a waiter there.

Q. What is his name?

A. Al Cohen, and just as I was walking up the street, he crossed the street from the gas station, directly across from the hotel, and just as he got on the sidewalk, we practically came face to face, and he called me a——

Q. Tell the Court what he called you.

A. He called me a "fucking scab" and took a swing at me, and I swung back, and we tangled and we wound up

in the gutter, and I went into the hotel, and came back out again, and there was a sergeant there, and I told him the story.

Q. A police sergeant?

A. A police sergeant, and we wound up arresting each [fol. 154] other.

Q. Who was your friend that was with you when that happened?

A. Some bus boy that works in the coffee shop—Dennis.

Q. This fellow who took a swing at you, Al Cohen, did you know him before?

A. Yes.

Q. He used to work in the hotel?

A. As a waiter.

Q. Did you see him on the picket line with the pickets?

A. I cannot recall him as a picket, but—well, he might be a captain. He seems to be in charge of walking back and forth.

Mr. Warren: We move to strike that. He said he seems to be in charge. He was walking back and forth.

Judge Cannon: He said he seemed to be in charge. Proceed.

Mr. Davis: That is all.

Cross examination.

By Mr. Brown:

Q. What time did this last incident occur?

A. In the morning, before noon, about 10:30, I would [fol. 155] say.

Q. What were your duties at 10:30?

A. Well, I worked all around. I was a bus boy, and went to the store room.

Q. What were you doing immediately prior to coming out of the hotel?

A. Working around the coffee shop.

Q. Doing what?

A. Bussing and everything that I could possibly do. I did everything I could for the hotel.

Q. Who was in charge of the room?

A. Well, we all are in charge. I was in charge, and a couple of the other people were in charge.

Q. There was no manager of the coffee shop?

A. Well, I do not know how to answer that one. I manage it at night, and somebody else managed it during the day.

Q. Who was in charge at 10:30 in the morning when you came out—you or someone else?

A. Well, part me and part other people.

Q. And part who else?

A. Well, the day girl was there, and she is in charge, too, and some of the bosses were there and they are in charge.

Q. And whom did you ask for permission to leave the [fol. 156] hotel?

A. I do not need no permission.

Q. You can go and come back as you please at any time?

A. Yes.

Q. That is your working arrangement?

A. No. I can leave any time. I do not have to ask anybody about leaving the coffee shop.

Q. I mean, to leave the hotel. You left——

A. To leave the hotel, yes. I can leave any time I want to.

Q. You did not have to get permission to leave the hotel?

A. No, sir.

Q. It has always been——

A. If I am there, I am working as a cook, and I manage it at night, and any time I am there cooking, I cannot leave my job and go across the street to my apartment but it is just—I was bussing, and I got fed up, and I was tired, and I wanted to get some clothes during the daytime.

Q. And with whom did you talk in management about leaving the hotel at all; did you talk to someone before you left?

A. No.

Q. Nobody at all?

[fol. 157] A. I just asked Dennis to come along with me—my bus boy.

Q. You did not ask anybody connected with management of this hotel for permission to leave, or told them that you were going, at 10:00 o'clock in the morning?

A. No.

Q. Did you have any conversation with Mr. Saul Cohen about this incident before it occurred?

A. No, sir.

Q. Didn't you have a conversation with Mr. Saul Cohen about you provoking some picket line disturbances, and did he not ask you to do that?

A. I do not understand.

Q. Did Mr. Saul Cohen ask you to get into some fight in the picket line?

A. No.

Q. You are under oath.

A. I am under oath.

Q. How much were you paid to do that?

Judge Cannon: Do not cramp him. Do not fight him.

By Mr. Brown:

Q. How much did you receive for what occurred?

A. I received nothing.

Q. You did not receive any money for this?

[fol. 158] A. No, sir.

Q. Has your case been tried?

A. No, sir.

Q. You said you each swore out warrants?

A. It has not been tried.

Q. Have you ever been arrested before?

A. No, sir.

Judge Cannon: Before he is arrested now——

Mr. Brown: Yes. He is arrested right now.

By Mr. Brown:

Q. Will you tell this Court your connection with a $200,000.00 jewelry robbery in Richmond, Virginia?

A. I do not know anything about it.

Q. You never heard of it.

Judge Carroll: What was your question?

Mr. Brown: I ask him to tell the Court his connection with a $200,000.00 jewelry robbery in Richmond, Virginia.

Mr. Sibley: I object. Counsel may ask him if he has been convicted of a felony, and if he has, he may ask him.

Judge Carroll: It is——

Mr. Brown: He said he was here.

Judge Carroll: The question as to whether he was arrested—we ruled out a lot of charges on the theory that [fol. 159] an arrest on charges may be on an unfounded basis. If you want to ask him about convictions, you may do so.

Mr. Brown: I am going to try to test his credibility. I withdraw the question concerning the arrest.

By Mr. Brown:

Q. Did you ever know a Mr. Pinkerton?
A. No, sir.
Q. You never heard of a Mr. Pinkerton?
A. I heard of him. I do not know him.
Q. Do you know Mrs. Pinkerton?
A. Pinkerman.
Q. Pinkerman?
A. Yes.
Q. Do you know her?
A. Yes.
Q. How well?
A. I know her well.
Q. Under what circumstances?

Mr. Sibley: I object, upon the ground it is not in cross examination of anything brought out on direct examination.

Mr. Brown: It goes to his creditibility, (sic) as I will show it when I connect it.

[fol. 160] Judge Carroll: Overruled.

By Mr. Brown:

Q. How well did you know Mrs. Pinkerman?
A. Well——
Q. Tell us what your relationship was.
A. I met her in Richmond, Virginia.
Q. Is it not true that you lived with her?
A. Yes——

Mr. Sibley: Wait a minute. I object to that, on the grounds it is immaterial and irrelevant and——

Judge Cannon: Sustained.

Mr. Brown: Your Honor——

Mr. Sibley: Just a minute——

Mr. Brown: I heard your objection.

Mr. Sibley: He is shouting at me. Your Honor, he is not—I object, upon the ground it is immaterial and irrelevant, and improper cross examination, and it is not in cross of anything brought out on direct examination.

Judge Carroll: Sustained.

Mr. Brown: May I be heard?

Judge Carroll: Sustained.

By Mr. Brown:

Q. Is it not true that Mr. Pinkerman was in jail in connection with a $200,000.00 jewel robbery while you were living with his wife?

[fol. 161] Mr. Sibley: I object to that, upon the ground it is immaterial, irrelevant, and it is a direct violation of the Court's ruling, and it is improper cross examination, and counsel should be reprimanded.

Judge Carroll: Sustained.

Judge Cannon: I am going to ask that counsel give up on the Pinkerman question—period.

Mr. Brown: If that is the Court's——

Judge Cannon: Let the record reflect it. Proceed. Let the Pinkermans alone.

By Mr. Brown:

Q. You stated that your picture was taken as you were leaving or entering the Saxony.

A. No, sir.

Q. When was that?

A. When I was entering the Casa Blanca.

Q. Did you suffer any harm or inconvenience thereby?

A. No, sir. What do you mean, physically?

Q. Yes.

A. No; but it worried me.

Q. You were worried about that.

A. Well, I do not know what you mean, but I was worried. I was wondering why they took a picture of me, and stuff like that. I know it is not because they like my looks.

[fol. 162] Judge Cannon: That is right.

Mr. Brown: Your Honor, I am through.

Mr. Davis: Come down.

(Witness excused.)

Judge Cannon: We are not recessed. Be seated.

Judge Carroll: Let us get the attorneys up here.

Judge Cannon: All interested parties will remain seated until we decide on the next session.

(Thereupon a conference was had between the Court and the counsel at the Bench, out of the hearing of the Reporter.)

(Thereupon a short recess was taken, after which the following proceedings were had.)

Judge Cannon: All witnesses interested in this case will return tomorrow night at 7:00 o'clock, in this same room.

(Thereupon the hearing was recessed until Friday, April 29, 1955, at 7:00 o'clock P. M.)

[fol. 163]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA. IN CHANCERY

No. 178554-D

[Title omitted]

Miami, Florida
Friday, April 29, 1955.

The above-entitled cause came on for further hearing before the Hon. Charles A. Carroll, Division D; Hon. Grady L. Crawford, Division F; and Hon. Robert L. Floyd, Division J, Judges of the above-styled Court, at the Courthouse,

Miami, Florida, on Friday, April 29, 1955, at 7:00 o'clock p.m., pursuant to adjournment on Thursday, April 28, 1955.

[fol. 164]

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Crawford: Gentlemen, Judge Cannon will not be present at this evening's session, and I do not believe he will be present tomorrow. He has assigned the cases numbered 178858, and 178666 to me, to be handled with the two assigned to my division.

Judge Carroll: Is the plaintiff ready to proceed with additional witnesses?

Mr. Sibley: Do I understand, your Honor, that Judge Cannon has withdrawn from the cases?

Judge Crawford: No, sir. He said he could not be present tonight, and I asked him what he wanted to do with the cases, and he asked if I would take them, and I said I would.

He said he would have Judge Holt assign them to my division.

Mr. Sibley: Have they been assigned by the senior Circuit Judge?

Judge Crawford: They have not. He was not present today, so I have taken no action, except to bring them here with me and to be here, myself.

Judge Carroll: I might say that Judge Cannon informed us yesterday that he did not think he would be able to arrange to be here tonight, but that he did not wish to hold up the proceedings.

[fol. 165] Mr. Sibley: I am disturbed that Judge Cannon said that he would not be here tonight, but that he would hear the cases any time today, and then he said he would try to be here tonight, and for that reason we did not proceed with his cases before him today.

Until the cases are assigned, I feel that they should remain before Judge Cannon.

Judge Crawford: It is perfectly all right with me. If there is any objection to the re-assignment, it should properly be taken up at the time a motion is made to re-assign them before the senior Circuit Judge.

Mr. Sibley: All right. We will go ahead.

Judge Floyd: I might say that the two cases I am here for Judge Gordon are not assigned and I am sitting as his alternate.

Mr. Sibley: I understand that is correct, which is appropriate under the rules.

Mr. Warren: Your Honor, would it not be possible to stipulate, into the record, that this is satisfactory with counsel on both sides, that we are willing to have it done, if it is, and that the formal order of Judge Holt be approved as and when made?

[fol. 166] Judge Crawford: If it is possible to stipulate, it is perfectly all right.

Mr. Sibley: I am unwilling to stipulate.

Judge Crawford: You are not?

Mr. Sibley: I am not willing to stipulate.

Mr. Warren: Your Honor, we would like to announce, into the record, that on behalf of the defendants, we have complete confidence in the Court, as now constituted, with the absence of Judge Cannon, that we are willing to stipulate that the cases Judge Cannon heard at the first session now be heard by your Honor, Judge Grady L. Crawford; and we are willing to stipulate further that the cases originally assigned to Judge J. Fritz Gordon, and in his absence on assignment in the Leon Circuit Court, heard at the first session by Judge Robert L. Floyd, that those cases continue to be heard by Judge Floyd, and we are willing to stipulate in the absence, at this time, of a formal technical order of assignment from Judge George E. Holt, that the defendants will consent and agree to the issuance of that order, at any subsequent time in these proceedings.

That is a motion, and I just make this one observation, that it is my understanding of the law, that anything not prohibited by law can be legally and appropriately stipu-

[fol. 167] lated by the parties to the litigation, acting through their counsel.

Judge Floyd: Regardless of that portion of your proffer and stipulation relating to the two cases in Judge Gordon's division, it would not require a stipulation.

Under the Rules, an alternate can hear the cases, appropriately without stipulation of his alternate, and of course,

the Court, with additional notice that Judge Gordon is not available, and he is in Tallahassee. With regard to the other part, you can require a stipulation, and counsel can state that he is unwilling to stipulate.

Mr. Warren: Would the Court permit me to make this further observation? It was represented—and I heard it stated at this hearing yesterday—that this matter was of an emergency nature, and required quick action, and I understood that observation to have been made by Judge Cannon, himself; and I understood that it was the position of counsel for the plaintiff; and in view of that, we hope that we may proceed as though an emergency had existed, whether it does or not.

Judge Crawford: Under the Division system, and the announcement that we made when we first started to hear these cases, sitting together, I think the proper method to [fol. 168] follow would be to have the Senior Circuit Judge make the re-assignment, if one is made.

Since Mr. Sibley wishes to follow that, we will go ahead at this time; and as far as I am concerned, I am now only concerned with the two cases that are assigned to my Division.

If the other cases are later assigned to my Division, I will undertake their consideration at that time.

Mr. Sibley: I would like to state, into the record, that I have every confidence in Judge Crawford. Two cases have been submitted to Judge Cannon, and he has ruled upon the evidence, and has particularly and peculiarly listened to the evidence of his own cases, under the understanding as announced by the Judges now sitting; and in view of the fact that we are in the middle of the hearings, insofar as his cases are concerned, I must insert (sic) that until he disqualifies himself, that he proceed with the hearing.

Mr. Warren: Would you permit me to make a motion?

Judge Carroll: Let me——

Judge Crawford: I would be glad to have you continue this exchange back and forth, but the decision is made.

[fol. 169] Judge Carroll: I think the position of counsel is clear, and the action on this could better be reserved until the time when the motion is made for the transfer to another Division, if that is the case, so let us proceed.

Are you ready, Mr. Sibley, to proceed?

Mr. Sibley: Yes; I am ready.

Judge Carroll: Call your next witness.

Mr. Warren: Your Honors, could I ask for clarification of the ruling? By that ruling, am I correct, or are we correct in understanding that no evidence relating to the Casa Blanca and the Sea Isle, being cases numbered 178666 and 178858 will be introduced at this hearing; will that be the effect of it, your Honor?

Judge Carroll: Well, I do not think so. The only effect that I know is that the Judge is not here to hear whatever is introduced. What effect it has, I do not know.

Mr. Sibley: I would like, at this time, your Honors, to ask for a three minute recess in order to re-arrange my witnesses. I had started with the Casa Blanca witnesses, and I intended to put that on first, and I would like to re-arrange those witnesses.

[fol. 170] Judge Carroll: Granted.

Mr. Brown: May I ask a question? Is Judge Crawford the alternate for Judge Cannon?

Judge Crawford: No, sir.

Judge Carroll: Motion granted.

Mr. Sibley: Who is the alternate for Judge Cannon?

Judge Floyd: Judge Giblin.

(Thereupon a short recess was taken after which the following proceedings were had.)

Judge Crawford: Gentlemen, I just talked to Judge Cannon by telephone, and he states that since there has been some objection to the original proposal, that he suggests that we go ahead with the hearing, as outlined by Mr. Sibley, and just omit from consideration these two cases that are assigned to his division, and he will consider them at a later time; or if they should be consolidated, they can then be assigned to one of the three Judges here.

Judge Floyd: What two cases did he have?

Mr. Sibley: The Case Blanca and Sea Isle.

[fol. 171] Thereupon—JERRY WITTELS was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. Please state your name.
A. Jerry Wittels.
Q. Where do you work, and what do you do?
A. I am steward at the Casa Blanca Hotel.
Q. How long have you been so employed?
A. About three years.
Q. Will you state whether or not you are acquainted with a man named or known as Pinky?
A. Yes.
Q. Where did you know him?
A. He was a waiter at the Casa Blanca.
Q. He worked there prior to the time that the——

Mr. Gramling: Pardon, me, Mr. Davis. Now, I am completely confused. I thought we—excuse me—I do not mean to take the floor. I just mean to inquire of you, and through the Court—I thought we decided that we were going to eliminate matters of the Casa Blanca and the Sea Isle, and now I see that you start off with a witness from the Sea Isle—Casa Blanca.

Are you going to pursue the Casa Blanca?

Mr. Warren: I understand the ruling of the Court that [fol. 172] they were to be excluded.

Judge Floyd: Let us hear from the other side.

Mr. Sibley: May I say a word?

If your Honors please, it is our contention—and I stated it at the outset of this hearing—that an industry on Miami Beach now is being assaulted by one union, and it is true that there are nine picket lines, and we shall attempt to show that this union, by reason of its background of threats and intimidation and violence, has forfeited its right to maintain this assault upon this industry.

Now, the Supreme Court of Florida has passed upon a stipulation similar to the one here involved.

Judge Carroll: Mr. Sibley, we will save you some time. We are not going to restrict you in your evidence. If you think it is material, subject to objections, to particular questions, you may proceed.

Mr. Sibley: All right.

Mr. Warren: Your Honor, if I may understand this situation, so I will know what to object to, and what not to object to—I understood, after a request for clarification as to whether or not the Casa Blanca and the Sea Isle cases would be heard in the absence of Judge Cannon, I had understood that Judge Crawford ruled that testimony re-
[fol. 173] lating to those hotels would not be admissible here tonight, because Judge Cannon, to whom they were assigned and who would make the decision, was not present.

So, in the interest of saving my making unnecessary and out of order objections, could I make this inquiry of the Court, please?

Is testimony in the Casa Blanca and Sea Isle, which cases are assigned to Judge Cannon, and which we understand, are still assigned to him, is that to be admitted here in his absence?

Judge Carroll: Well, as I understand it, if there was any particular special facts or evidence that related to those two cases, there would be no need to put that on; but that does not mean that anything which may bear on those properties or locations would necessarily be excluded, if counsel has some reason to feel that it gives some evidence on the general picture or the effect of the other cases.

Mr. Warren: Thank you, sir.

Judge Carroll: You may proceed.

By Mr. Davis:

Q. Mr. Wittels, I will ask you whether or not you had a conversation with a man known as Pinky on Sunday evening, April 17?

A. Yes, sir.

Q. What was that conversation, and where did it take place?

[fol. 174] A. Pinky was walking the picket line, in front of the north side of the Casa Blanca, where the employees go

in and out, where the employees check in and out from work and it was in the evening about—I think it was about 6:00 o'clock.

Q. What transpired?

A. Well, the conversation was—I cannot remember the entire conversation—but I do remember there was a friend of mine and myself, and myself, and another fellow who walked out there, and Pinky was walking up and down, and he was a picket that day, and I worked with Pinky, and I knew him, and we started talking, and when I walked out, evidently I looked tired, and he said, "You look awful tired"——

Mr. Brown: May I interpose an objection, your Honor. The testimony so far is that this incident occurred on the picket line in front of the Casa Blanca, and the testimony is heresay, (sic) to begin with; but testimony concerning a conversation between a steward of the Casa Blanca and a certain Pinky, name unknown, who has something to do with the Casa Blanca—probably a former employee, and obviously related only to the Casa Blanca, and under the rule announced at the very outset of the trial, the evidence pertaining to each case peculiar to each case would be taken into consideration only by the Judge who was concerned with that particular case.

[fol. 175] The Judge concerned with the Casa Blanca case is not present. So, under the rule announced at the outset and repeated again here concerning this evidence——

Judge Carroll: We note where you say the testimony obviously relates to somebody. We do not know what the testimony is.

Mr. Gramling: Well, sir. The previous testimony fastened Pinky down on this very occasion to the picket line, to this very incident that he is talking about.

He is talking about the same Pinky that Joffre Nassour testified about, and that is the witness that you will recall who said he walked past a friend of his, Pinky, who said, "That is the guy", and they took a picture.

Now, this is the same picket line, the same place, and the same time and the same thing.

How this ties in, for instance, Judge Carroll, with your Saxony case, or Judge Floyd with your Roney Plaza and

Sans Souci, or the Sherry Frontenac, or Sorrento Hotel; or Judge Crawford, the Monte Carlo and Algiers—I fail to see how it is in support of the testimony of their witness, Joffre Nassour, who testified only pertaining to the picket [fol. 176] line of the Casa Blanca.

Judge Carroll: Objection overruled, without prejudice to move to strike it if it appears immaterial.

I think he was interrupted right in the middle of the answer. You may have to re-orient the witness.

By Mr. Davis:

Q. What was the conversation between you and Pinky on that occasion?

Mr. Brown: Objection, on the ground of heresay. (sic)

Judge Carroll: Overruled.

A. As I was saying, when I walked out, he made a remark that I looked very tired, and I said, "No; I am not too tired, Pinky, because we have quite a few loyal employees that are still with us," and he said, "Yes." He said, "That is too bad those rat bastards like Joffre are causing us trouble," but he said, "He is smart. We will get him."

He said, "Though we will break his back", and then we drifted off to something else, and through the conversation, it was pertaining to that.

Q. I will ask you whether or not he made any statements to you as to why they were after Joffre?

A. Yes. He said, "It is bad enough that he was working in the Casa Blanca after the walkout," but he said, "It is [fol. 177] even worse when he goes down to help out the Saxony."

Q. Do you know whether or not Pinky was a picket captain?

A. Well, it appeared to me that he was, because he put the picket signs on the people, and took them off, and it appeared to me that he assigned the pickets.

Q. Do you see the man known as Pinky in the room tonight?

A. Yes.

Q. Will you point him out?

A. Sure.

Q. Which one is it?

A. The gentleman over there in the red tie, and the blue jacket, and the light gray pants.

Mr. Davis: You may inquire.

Mr. Brown: I renew my motion to strike, on the ground the testimony only related to the Casa Blanca.

Judge Carroll: Denied.

Cross examination.

By Mr. Brown:

Q. What is your capacity at the Casa Blanca?

A. I am the steward.

Q. How long have you been a steward?

A. About three years.

[fol. 178] Q. As such, are you in a supervisory capacity; do you have other employees working under you?

A. Yes.

Q. How many?

A. Approximately 35.

Q. Have you come and gone each day to work, or are you living in the hotel?

A. I come and go; yes.

Q. What time do you come to work?

A. Between four and six in the morning, or 6:30.

Q. What time do you leave?

A. Anywhere from 6:00 in the evening to 1:00 o'clock in the morning.

Q. Now, when you come—when you arrive in the morning, do other employees arrive at the same time?

A. No; because my job there is not any specific hours to my job. My work, when my work is done—some days I might only have three or four hours work, and it just depends.

Q. I am relating to the time of your arrival. Are there other people employed in the hotel who arrive at the same time?

A. I do not know what you mean, because I have no specific time to arrive. There are people arriving at all different times, and there are different shifts.

Q. During the time that you have been going to work since the picketing started, have you been molested or [fol. 179] stopped from entering the hotel on any occasion?

A. No.

Q. Have you been prevented from leaving the hotel on any occasion?

A. No.

Q. Has anybody assaulted you or struck you?

A. No.

Q. Have you seen anybody struck or assaulted at the Casa Blanca Hotel?

A. I have seen intimidation.

Q. I just asked you a question. Answer it.

A. I answered it.

Q. Have you seen anybody struck or assaulted at the Casa Blanca?

A. Physically, no; mentally, yes.

Mr. Gramling: We move to strike that as being unresponsive to the question.

Judge Carroll: Motion granted.

By Mr. Brown:

Q. Of the 35 people that were under you, were there 35 people under you before the walkout occurred?

A. Yes.

Q. Of those 35, how many of them are out on the picket line and in protest?

A. I would say around 20.

Q. Are they members of the union to your knowledge? [fol. 180] A. I do not know.

Q. Do you know whether any of them are?

A. I do not know.

Mr. Brown: That is all.

Mr. Davis: Come down.

(Witness excused.)

Thereupon—DENNIS BYRD was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

By Mr. Davis:

Q. Please state your name.
A. Dennis Byrd.
Q. Where do you work? What do you do?
A. I am a bus boy at the Casa Blanca.
Q. How long have you worked there?
A. I have been there for about two weeks now.
Q. What, if anything happened to you on Monday, April 18, at approximately 11:30 in the evening?
A. Steve—this friend of mine—and I got off, and we decided we would go out—to go to the drug store.
Q. Speak a little louder, please.
A. And we went out to the service entrance, and as we were walking out, there were five pickets walking down the sidewalk, and two of them—I think two of them in the bunch were wearing cards on them, and they pointed us out as [fol. 181] soon as we walked up, and said, "There come two of the scabs right now", and said "We will just have to bash their heads in for them."

And we were going to turn to the left, but they were blocking the sidewalk, and we had to turn to the right to go on up. I would say it was five of them in the bunch.

Q. Now, what if anything, happened to you, or perhaps happened in your presence on Tuesday, April 19, shortly before 10:00 o'clock in the morning, that is the following day.

A. Well, Joffre Nassour asked me to go across the street with him to his apartment to get his clothes, and he said he had not changed clothes in about three days, and he wanted me to go along with him, and I did not much blame him, after what they told me, and I was the same way. I wanted someone to go along with me, and I told him all right—we were not busy, and we went outside, out the side entrance at the coffee shop, and we were walking down the sidewalk, I noticed a man coming across the street, and he met us about middleways of the Casa Blanca, and when he got right to us—shall I repeat what he said?

Judge Crawford: Answer the question.

A. (Continuing) Well, he looked at Joffre and he said, "That fucking scab," and he swung at him, and they went down, and when they went down I whirled around. I thought maybe one would grab me, and I did not see any, and then I turned around and broke up the fight.

[fol. 182] There was another fellow coming in and help me, then, we walked back in the coffee shop, and Joffre went back to the door, and there was a police car there, and he went out to the police car, and I went back with him.

Q. Did you say this picket came across the street to meet him?

A. Yes.

Mr. Davis: You may inquire.

Cross examination.

By Mr. Brown:

Q. How long have you worked at the Casa Blanca?
A. About—I would say nearly two weeks.
Q. How long?
A. I started the 18th.
Q. The 18th of what month?
A. This month.
Q. Where did you work previously?
A. I was working in Mobile, Alabama.
Q. In Mobile, Alabama?
A. Yes.
Q. When did you leave Mobile, Alabama?
A. I left Mobile about a month ago.
Q. How long have you been in Miami?
A. I have been in Miami about three weeks now.
Q. Speak louder, please.

[fol. 183] A. Nearly three weeks, now.

Q. Did you ever work at the Casa Blanca before?
A. No, sir.
Q. Have you been working at the Casa Blanca steadily since the picketing started?
A. Yes, sir.
Q. Has anybody bothered you in your going or leaving?

A. I have not been out, because they told me that, and I am not going out.

Q. You went out the time the fight occurred?

A. I had somebody with me, too.

Q. How did you happen to come out?

A. He asked me to go out with him, and I do not blame him. If I would have gone out, I would want somebody to be with me.

Q. You have not been out of the Casa Blanca since the 18th, excepting for this one occasion?

A. That is right.

Q. Not one day——

A. No, sir.

Q. Did you know that people had been coming to and leaving the Casa Blanca every day without being molested; did you know that?

A. Usually when somebody tells me something, I believe [fol. 184] them. I do not take a chance.

Q. Answer the question.

A. No, sir; I guess——

Q. Do you know that people have been entering and leaving the Casa Blanca without being molested?

A. I guess they have.

Q. Do you know it or not?

A. No, sir; I do not.

Q. Have you ever heard of anybody being molested in entering or leaving the Casa Blanca?

A. Yes. I heard quite a bit.

Q. Who?

A. Quite a few of them. I do not know all of their names.

Q. Do you know one?

A. Well; yes. I heard them talk. I have a friend of mine who was with me, Steve. He was with me that night.

Q. Was he hurt?

A. Neither one of us was hurt.

Q. You do not know—as a matter of fact, you do not know of a single person, since the 18th of April, that has been hurt, disturbed or bothered in any way, because he entered or left the Casa Blanca, do you?

A. I think Joffre was hurt a little, and I know of another man. I do not think it was in the hotel, but I think he was [fol. 185] hurt.

Q. Do you think he was hurt?

A. Yes.

Q. Did he make an arrest or charge to the police?

A. I do not know.

Q. What is his——

A. I do not—I do not have the information on that.

Q. But on this one date, despite the fact that you have not left the building, and not heard of any real disturbance at the Casa Blanca since the 18th, on this one day you needed a bodyguard to go out?

A. I was not a bodyguard, and he was not a bodyguard.

Q. As a matter of fact, was it not pre-arranged for you to go out with Joffre Nassour?

A. No, sir.

Q. It was not pre-arranged?

A. No, sir.

Q. Didn't you have some idea that there was going to be —that something was going to take place?

A. He wanted to get his clothes. That is all I know.

Q. And he needed your help?

A. He wanted me to go along with him; yes, sir.

[fol. 186] Q. What was your occupation before you came to Miami?

A. I worked in a laboratory for the International Paper Company.

Q. You worked where?

A. In a laboratory for the International Paper Company.

Q. What did you do in the laboratory?

A. I was a tester.

Q. With what company?

A. International Paper Company.

Q. Do you have a police identification card?

A. No, sir; not at the present time.

Q. You do not have one?

A. No, sir.

Q. You are working at the Casa Blanca?

A. Yes, sir.

Q. Is that one reason that you have not come out of the Casa Blanca since the 18th, except for this one occasion?

A. No, sir. The only reason I do not have a police identification card is because I was scared to go out. I was going.

Q. You are out of the Casa Blanca right now. Are you afraid of anything?

A. Well, I do not like it too well.

[fol. 187] Q. Do you feel intimidated here?

A. Not in here; no, sir.

Q. You do not?

A. No.

Q. Would it bother you or disturb you to get a police identification card now?

A. No, sir; not at all.

Q. You intend to?

A. Yes, sir.

Q. Have you ever been arrested?

A. No, sir.

Mr. Sibley: I object to that.

Judge Carroll: Sustained. Counsel is reminded of a ruling about people who were arrested or convicted.

Mr. Brown: I regret that.

By Mr. Brown:

Q. Have you ever been convicted of a crime?

A. No, sir.

Q. Have you ever worked as a strike breaker anywhere else?

Mr. Sibley: I object to that, upon the ground it is immaterial and irrelevant.

Judge Carroll: Sustained.

By Mr. Brown:

Q. What are your duties in the Casa Blanca?

A. I clear the tables.

[fol. 188] Q. Do you have a food handler's health card as required by law?

A. Yes, sir.

Q. You do have that one?

A. Yes, sir.

Q. How did you get it?

A. I got it in the hotel.

Q. The hotel gave it to you?

A. No, sir. They had a nurse in the hotel that took the blood tests for us.

Mr. Brown: That is all.
Mr. Davis: That is all. Come down.

(Witness excused.)

Thereupon--VERA LUCK was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. Please state your name.
A. Vera Luck.
Q. Where do you work? What do you do?
A. Casa Blanca. I am a waitress.
Q. How long have you been working there?
A. I have been there just two weeks.
[fol. 189] Q. What if anything happened to you on Monday, April 25, at approximately 2:30 o'clock in the afternoon?

A. As I was leaving work, it was between 2:30 and a quarter to three, my car was fetched to me by the doorman, and the girl that worked with me, we got in the car, and in the driveway we were blocked by a striker who had a picket on him, and he stayed there until he had a mouthful of saliva, and he expectorated right over the car and walked, and he called me a scab, and he said, "Don't worry. One of these nights you will get yours."

Mr. Davis: That is all.

Mr. Brown: Your Honor, can I move that the testimony be stricken, since the identification is simply a conclusion, and there is no identification of any defendant or person associated with the defendants or agents of them, and the testimony is completely irrelevant and unconnected with the issues.

Mr. Davis: My recollection of the testimony is that the witness stated that a person in the picket line——

Mr. Brown: A striker.

The Witness: I meant——

Mr. Gramling: No fair coaching the witness.
Judge Carroll: The motion is denied.

Cross examination.

By Mr. Brown:

Q. How long have you worked at the Casa Blanca?
[fol. 190] A. Two weeks.
Q. Do you have a police card?
A. Yes, I have.
Q. When did you get it?
A. I had it renewed just the day this incident happened. I had it renewed.
Q. Last Monday?
A. I had it renewed.
Q. Did you have one prior to last Monday?
A. Yes, I did.
Q. Where did you work prior to the Casa Blanca?
A. I did not work at the Beach. I got my card—I went for a police job. They were putting on women checkers at the Beach, and I took a Civil Service Test, and I did not get the job. There were too many girls for it.
Q. I asked you where did you work?
A. I worked at the International Airport.
Q. In what capacity?
A. Waitress.
Q. Then your next—when was that?
A. I was at the International Airport from 1948.
Q. You have not worked since?
A. I worked there at 1948, and it was at the International Airport.
[fol. 191] Q. Where have you worked immediately prior to the Casa Blanca, and when?
A. At the International Airport.
Q. In 1948?
A. I started at the International Airport in 1948, up until just recently when—until——
Q. Until when?
A. This is April. I stopped there last November, over the hoidays, (sic) and I took a rest. I was home. That was all. I was hired for the Casa Blanca before I ever heard of

the picket line or any strike at all. There was a girl being operated on, and I was hired. I was down at the El Morroco at the Keys for a vacation.

Q. Do you live in the Casa Blanca?

A. No; I do not.

Q. You come to work each day?

A. Yes; I do.

Q. Have you ever been struck or assaulted in any way on entering or leaving the Casa Blanca?

A. The only thing that happened——

Q. Answer the question. Have you ever been struck or assaulted or interfered with physically, in any way on entering or leaving the Casa Blanca?

A. I have been interfered with leaving on last Monday, when they stood in front of the car and stopped me from [fol. 192] going until he had time enough to expectorate on my car, and come around and call me a scab, and tell me, "You will get yours one of these days."

Q. You did leave?

A. Oh, certainly.

Q. Nobody stopped you from leaving, did they?

A. I did not leave at the minute when I wanted to leave. I had to wait, unless I wanted to run over him.

Q. Is that the only time that you had any disturbance?

A. The only time.

Q. Since you have been coming and going?

A. That is right.

Q. You did not need a bodyguard like the previous witness, did you?

A. Well, I had the girl from work with me. I do not feel like I need a bodyguard.

Q. You are able to take care of yourself?

A. I hope to. There are times, though, I mean——

Q. You are not——

Mr. Sibley: Wait a minute. Let her answer the question.

Mr. Davis: Be courteous enough to let her answer.

Mr. Brown: You be courteous not to interrupt me, address your remarks to the Court, please.

[fol. 193] Judge Crawford: The witness was answering the question.

The Witness: I forgot what——

Mr. Brown: Did you finish your answer?
The Witness: What was your question?

(The last portion of testimony was thereupon read by the reporter as above recorded.)

The Witness: (Continued) There are times, though, I mean, well, I hope to be able to take care of myself, but there are times when you get frightened of things when they come up and threaten you, and you call it heresay, (sic) and the conversation that comes to you in a hotel. Nothing happened to me except that one incident, and I did not particularly like it.

Oh, yes, there has been a time. My picture was taken. I am sure they did not want my picture for any reason. I do not know if there was film in the camera, but they took the picture.

By Mr. Brown:

Q. Did that frighten you?
A. No, it did not frighten me, but it had me wondering why should they want my picture. I am no celebrity. I am just a waitress.
Q. You intend to go to work tomorrow, don't you?
A. I hope to.
Q. And you are not afraid of going to work tomorrow, [fol. 194] are you?
A. I have no reason to be.

Mr. Brown: That is all.
Mr. Davis: Come down. That is all.

(Witness excused.)

Thereupon—Ernest Davis was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. Please state your name.
A. Ernest Davis.

Q. Where do you work and what do you do?
A. I was working at the Casa Blanca Hotel.
Q. Beg pardon?
A. I was working at the Casa Blanca Hotel.
Q. You are not working there now?
A. No.
Q. What happened?
Q. Well, I had an incident—a fight with a guy, and he threatened me on account of my family, and my wife, and advised me that I had to leave.
Q. Why did you have to leave?

Mr. Gramling: Your Honor, I move to strike that answer as being totally unresponsive to the question. He mut- [fol. 195] tered something about my wife and family or something, but did not answer the question why he is not working there.

Judge Carroll: Overruled.

The Witness: I had a fight with a guy——

Mr. Brown: Is there a question pending or hasn't this witness answered?

Judge Carroll: He answered. He asked him another question.

By Mr. Davis:

Q. Ernest, suppose you explain to the Court why you quit your job and when you did quit it?

A. I quit the job the day before yesterday, for the simple reason that I had a fight with a guy on Second Avenue, and this guy—he was—I saw him in the picket line after the fight, so we paid a $15 fine over it at Judge Thomas' Court, and after he came out, I was going into the hotel, and he said, "You got off light before," and another guy was behind him, and which was a white fellow, and there was only one colored fellow in the picket line, and that is the guy I had a fight with.

He said to me, well, he said the officers come, and I kept in the hotel, me and the two other guys together, and we got in—and I said, "Well, boys, you all can stay here and work, but I am—I have got to go." So I left. That is the reason I am not there anymore.

Q. Where is your family?

A. My family is in Palm Beach.

[fol. 196] Q. When did they go to Palm Beach?

A. Yesterday.

Q. Where did this fight take with the union man?

A. It taken place on Second Avenue and Tenth Street.

Q. What time; when was it?

A. It was a little after three in the morning.

Q. What date?

A. On Saturday morning—well, it was Friday night—Saturday morning.

Q. Last Saturday morning?

A. Yes.

Q. What happened; how did it start?

A. There were three of us working in the kitchen and we were short of help so we three went to town.

Q. All three of you were working at the hotel?

A. All three of us were working at the Casa Blanca, and he wanted another man, and I walked into the Reno Bar—a friend of mine I saw in there, a boy called Willie, and I asked him did he want a job, and he said, yes, he needed a job; he was not working, so Willie and I were talking about the job, and in walks a friend of his, so this guy says, "Where are you working?" He said, "Casa Blanca," and he said, "No friend of mine is going to work there."

He said, "I am a union man," and the kid said, "So what?" He said, "I want a job."

[fol. 197] So me and the kid walks out of the place and walks down the street, and he followed us to Tenth Street and Second Avenue.

I stopped and asked him—I said, "Where are you going," and so he said, "I am going with the boy." So I said, "I am going to find out where the boy lives so I can pick him up in the morning."

So when I started to turn to walk off, he swung at me, and that is when he and I had it, down on the ground, and when the cops came there, he and I were down on the ground fighting.

Mr. Warren: Your Honor, we respectfully move to strike this witness' testimony, on the ground that it does not prove any of the allegations of the complaint.

It is irrelevant and immaterial—and if the Court will permit me, I would like to make a comment. It shows it happened on Second Avenue and Tenth Street, in another city from the alleged scene of this picketing. It has no connection between the picketing, and not connected with it, the picketing, and apparently an injunction would not reach a street fight over in Miami here; and if every little barroom brawl, your Honor, that grows out of union men objecting to these persons working there, is to be evidence in favor of enjoining picketing, it is possible, by some form of twisted reasoning, to tie nearly every—most any fight in connec- [fol. 198] tion with it, if a reference is made to it.

I earnestly insist that this is so remote, that it does not prove anything.

Mr. Davis: Governor, I respectfully suggest that you were not listening when the witness testified that the same man that said that, that he saw him in the picket line over at the hotel.

Mr. Warren: I did not hear that. In spite of that I withdraw the objection.

Judge Floyd: He said he saw him after the fight took place.

Mr. Gramling: After a fight up here in colored town, and he later finds, by some circumstances, apparently in a barroom brawl at 3:00 a. m. in the morning, there happened to be a personality seen over at the picket line at the Casa Blanca, miles away, in a different municipality.

We may again renew Governor Warren's objection to this type of testimony that has been induced, and you folks, so far, have reserved ruling on this ground, that it is subsequent to the filing of any pleadings or objection by the plaintiffs, and would tend to show at the time the plaintiffs swore that; when they took their oaths, that there were acts of violence, they are now relying upon this kind of stuff. [fol. 199] This occurred subsequently, even though it was in a different city.

Mr. Warren: Your Honor, then I did not hear clearly. I did not get that. But I renew and reaffirm the motion to strike it, and I would like to add this comment, in light of what Mr. Gramling brought out.

If every person participating in this picket line is to be held responsible for any acts that he commits far distant

from the picket line, in another city—if that is going to be visited back upon the picket line there, it seems to me that a person picketing there is branded and bracketed as a picketer, regardless of where he goes, or whatever he does.

I do not want to be far fetched in this thing, because it is a matter of grave concern; but if a picketer got into an argument out, we will say in Allapattah or Opa Locka with his wife in a domestic dispute, and if some reference was made to the Casa Blanca—if this is real, you could tie that in with it.

That seems to me—I do not know hardly how to express it, because in 25 years before the bar, I do not believe I have ever heard before, an effort made to present testimony [fol. 200] that is so remote and so unconnected and so—you might say—just—I do not know another word for it.

Judge Carroll: The motion will be denied. As I recall, the testimony, there was evidence from this witness that the man with whom he had the altercation himself later connected it up with this transaction in some future conversation or some further conversation with him about it at the location.

By Mr. Davis:

Q. By the way, Ernest, did you find out the name of this man?

A. Frasure or Frazure—that is the name that he gave.

Q. Was there any other occasion that you had any hindrance by any man in the picket line?

A. That was when I came back when I—Frazure was in the picket line, and the other white guy behind him—that is when he spoke and said, "The dog came back to lick the bone," so I go—to see about those in the hotel, and later on in the day—you see, I work from 4:00 in the afternoon to 12:00 at night, and I could not leave there at 12:00 at night by myself, not after what the guy spoke to me, as he did, and I stayed there all night, and waited to the next afternoon, and I left, and I called the man and told him I was not going to work. He said, "Why," he asked me why, and I told him why. I have not been back to work.

[fol. 201] Q. I will ask you, Ernest, whether or not you

ever were hindered by any man in the picket line, on any other occasion?

A. Well, no, sir, because when I went there, I went in the afternoon, and I stayed at night, and I would continue to stay, and my wife called me and said——

Q. Do not testify as to what your wife said.

A. What I mean is, that is the reason—one of the reasons why I had to—why I could not leave there at 12:00 o'clock at night and come home.

Mr. Davis: That is all.

Cross examination.

By Mr. Brown:

Q. Mr. Davis, you say that you got into a fight on 2nd Avenue and 10th Street, was it?

A. That is right.

Q. In Miami?

A. Miami.

Q. And this conversation that led to the fight started in the Reno Bar?

A. It started in the bar; that is right.

Q. Had you had a few drinks?

A. I had a few drinks; no, I did not.

Q. Did you drink at all?

A. I did not go in for a drink. I went to get a friend out.

[fol. 202] Q. How long about were you in there?

A. Four minutes.

Q. Four minutes?

A. That is right; as long as to ask him.

Q. This fellow walked up, was he a stranger?

A. Who was a stranger?

Q. Frasure.

A. Yes; he was a stranger to me.

Q. You never saw him before in your life?

A. Sure, I have seen him several times.

Q. Before then?

A. Sure.

Q. You did not know his name?

A. I just now repeating it to you.

Q. Well, you said you learned his name later.
A. I said the man named was Frasure.
Q. When did you first find out his name was Frasure?
A. In Court.
Q. In Court?
A. Yes.
Q. Now, what Court was that?
A. That was in colored precinct, down on 11th Street and 5th Avenue—Judge Connor's Court.
Q. Did you take the first swing, Davis?
A. I did not. I said the man swung at me.
[fol. 203] Q. He swung at you?
A. That is right.
Q. How much were you fined?
A. $15.00.
Q. For what?
A. For fighting.

Mr. Brown: That is all.

Redirect examination.

By Mr. Davis:

Q. Ernest, how much was Frasure fined?
A. $15.00.
Q. For what?
A. Fighting.

Mr. Davis: That is all. Come down.

(Witness excused.)

Thereupon—JANE PEREZ was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. Please state your name.
A. Jane Perez.
Q. Where do you work?

A. Casa Blanca Hotel as a waitress, in the coffee lounge.
[fol. 204] Q. How long have you worked there?
A. About a year and a half.
Q. On last Monday, April 25th, what if anything happened to you?
A. Yes. We started out of the driveway, and the car was in front of us—the people—the boy—blond headed fellow wearing this sign.
Q. Picket sign.
A. That is right. And he tried to stop the car—tried to hinder it from going out, so when they finally—let us go by, we started by, so he came up to the side and he yelled into the car to the other girl and I, and he said, "You just wait." He said, "I will get you." He said, "I will turn this car upside down and wreck it for you."
Q. Did anything else happen to you, other than that incident?
A. Yes. On Saturday afternoon, there were three of us girls driving up Collins, and we were being followed by a party in a green Buick. He tried to force us off the road.
Q. Let me interrupt you right there. Have you before or after this incident seen this same Buick car?
A. Yes; I have.
Q. Where?
A. Over across the street in front of the Hotel.
[fol. 205] Q. It is parked there every day?
A. Well, I do not know every day or not, but occasionally; yes.
Q. Do you know to whom it belongs?
A. Well, I know who drives it quite often.
Q. Who is that?
A. A waiter that used to be—named Pinky.
Q. Is that the Pinky that used to work in the hotel?
A. That is right.
Q. Did you see him drive that car?
A. Yes.
Q. On more than one occasion?
A. Yes.
Q. When was it that the car followed you?
A. That was Saturday.
Q. Will you tell the Court just what happened?
A. Well, he followed us all the way up to 100—I mean

through 73rd Street and Collins Avenue, and when he could not force us off the road, we finally got in a center lane of traffic, so he got a little bit disgusted because he got a stop light, and we went ahead of him, and we made the light, and he got a stop light, and he turned and went back.

Q. How many people were in the car?

A. Three girls.

Q. How many were in the other car?

A. Only one. That is all I saw.

[fol. 206] Q. Only Pinky?

A. Yes.

Q. Is there any other occasion that you were followed?

A. Yes. Monday afternoon, there were three fellows in a blue Bel-Aire that followed us from the hotel, all the way down Lincoln Road, two blocks——

Q. Did you recognize any of those?

A. Well, I am not positive, but I think I would.

Q. Who do you think it is?

Mr. Brown: I object.

Mr. Davis: Question withdrawn.

By Mr. Davis:

Q. Was there any occasion that you observed anyone taking the license number of your car?

A. Yes.

Mr. Brown: Your Honor, I move to strike that. That is, strike her testimony with regard to the blue Bel-Aire—the ownership of which is unknown. She thinks she might know something about it; she is not sure.

I move that the entire testimony be stricken and as identified with nothing.

Judge Carroll: Granted.

By Mr. Davis:

Q. Where did this automobile start following you?

A. From the hotel. It pulled out across—when we pulled out the north center lane of traffic, and went up about three [fol. 207] or four blocks, up Collins there.

Q. Where was the car parked when it started to follow you?

A. When we pulled out of traffic up into traffic there, we happened to notice the car being in back of us, and when we turned, they turned, and they pulled right up, and they would stay about a third to half a block in back of us, and all the way down Collins to Lincoln Road, and we turned right on Lincoln Road, and we lost them at two blocks down Lincoln.

Q. Is there any other——

Mr. Brown: Just a moment. I make the same motion, that I do not think the Court is concerned with her traffic problems and——

Judge Carroll: Granted.

By Mr. Davis:

Q. Have you ever seen this car before or after?

A. Yes; I have seen it.

Q. Where?

A. One like it. I cannot positively say that it is the same car.

Mr. Davis: You may inquire.

Cross examination.

By Mr. Brown:

Q. You described the incident on April 25th where some pickets were standing in your way as you were leaving, or a picket was standing in your way. You were with Vera [fol. 208] Luck, were you not?

A. No, sir; I was not.

Q. You were not?

A. No; it is the wrong girl.

Q. Who was with you?

A. It was Jessie Austin was with me, and Kay Enders was with me.

Q. Are you living in the hotel?

A. No, sir.

Q. You come and go each day?

A. Yes, I do. My husband takes me to work in the morning.

Q. Have you missed any days since the picketing started?

A. Yes. I have been out. In fact, I was off—I would leave the hotel 45 minutes before the walk-out in the afternoon, and I was off Saturday and Sunday, and I was off last Tuesday.

Q. You are now working back there?

A. I certainly am.

Mr. Brown: That is all.

Mr. Davis: Come down.

(Witness excused.)

[fol. 209] Thereupon—RUTH KNELL was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. Would you please state your name?

A. Mrs. Ruth Knell.

Q. Do you work anywhere?

A. I am a housewife.

Q. Who is your husband.

A. Mr. Hans Knell.

Q. Where does he work?

A. Casa Blanca Hotel.

Q. What does he do?

A. He is a chef.

Q. What, if anything, happened to you on Saturday evening, April 23rd?

A. Well, my husband and I took a walk, and he told me he would like to go somewhere for a few minutes, and I told him I would meet him at a bar and grill, so I went down there and I sat down and I ordered a drink, and by the time I got a drink, I lit a cigarette, and I was looking for the bartender to hand me a match, and as I looked up, a man across the bar said, "Where is that scab husband of yours, and where is that guy that crosses the picket line?" [fol. 210] I said, "I beg your pardon. I do not even know

you." And he said, "You know me all right. If you do not, you sure will."

And I said, "Look, sir, if you want to talk to my husband, you speak to him; don't talk to me."

And just about then, Hans came around, and he started calling Hans very many obscene names, and including scab and strike breaker, and very many bad names, and I said, "I do not want to stay in here," to my husband, and he said, "Well, you are such and such, anyway," and he called me names, so my husband said, "Let's go, Ruth," and I started to go, and the guy grabbed me by the sleeve, and I said, "Let go before we get in trouble," and we started up towards Washington Avenue, and right behind us, very close, was five people—and five men, I should say, and there they were all talking about strike breaking, and scabs, and union breakers and, I mean, which I do not understand myself, because I do not work, and saying that Hans would never work again, and so they are so close, and I got panicky, and when we got to the corner—from the corner of Washington and Collins, a little—not quite so well lighted, so I said to Hans, I said, "Let's go to a friend of ours, at George's Bar," and we do frequent the place, but they are more or less friends of ours.

Q. Tell us what happened?

A. And they came right behind us, so we go in this little bar, to avoid getting in a fight, and just as we started to go [fol. 211] in the door, two of the men, of the five—two give us a shove, and we really bounce out, and they grab my husband, Hans, and push him to the next doorway, which is a beauty parlor, and they have—like in a doorway, they are pounding him and kicking him, and one of the men hit me in the shoulder, and I dropped my pocket book and as he went to pick it up, I took my shoe off, which was a pump slipper, and hit him over the head with the heel real hard like, and one of the men—somebody came in and drew me back in George's Bar, and by that time there was a couple of squad cars, and everybody disappeared.

Q. Did you recognize any of these men that followed you and beat up your husband?

A. I knew one of them from being around there. They call him Raven. He was an Indian, and I could describe

him very well. I knew exactly where he lived, and he had frequented those——

Q. Did you notify the policy of his identity?

A. I did, sir.

Mr. Davis: That is all.

Cross examination.

By Mr. Brown:

Q. You say you only knew one of these men?

A. I knew many of them, but I do not frequent these little outside bars.

[fol. 212] Q. You would not know whether any of them were union members or not?

A. I certainly would not, sir.

Q. You would not know where they worked, would you?

A. No, I would not.

Mr. Brown: On the basis of her answer, I move to strike all of her testimony of this incident with some bar room brawl after she had a drink and a fight with some unknown persons. She says she does not know if they are members of the union, or work in any hotel.

Judge Carroll: Do you propose to connect this up?

Mr. Davis: Yes; by the next witness.

Judge Floyd: The husband?

Judge Carroll: We will reserve ruling until after that. Unless it is connected up, we will strike it.

Cross examination.

By Mr. Brown·

Q. Were warrants sworn out after this incident?

A. Yes.

Q. And was a warrant sworn out against you?

A. No.

Q. Against your husband?

[fol. 213] A. No. The warrant was sworn out—I do not know how you do it anyway. They arrested this man called Raven Stiling, I believe it is.

Q. Raven is the only person that was arrested as a result of this incident?

A. That is the only one, sir.

Mr. Brown: That is all.

(Witness excused.)

Thereupon—HANS KNELL was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. Please state your name.
A. Hans Knell.
Q. Where do you work?
A. Casa Blanca Hotel.
Q. What do you do?
A. Chef in the coffee shop.
Q. How long have you worked there?
A. Since the 5th of January.
Q. Is that 1955?
A. Yes.
Q. On the evening of April 23rd, what occurred to you? [fol. 214] Will you tell me what happened after you left the bar?
A. I am supposed to pick my missus up in a certain place, and when I got there, I found out she had an argument with one of the guys, and I recognized——
Q. Tell us what happened that you saw, yourself; what did you observe; what happened to you?
A. They called me all names—scab, and strike breaker and everything else, and finally I said—I heard one more insulting remark, and I throwed an ash tray at him, and I said to my missus, "Let's go. It's not the place for us," and we walked away for about a block and a half, and to go to a friend of mine business, and just the moment we wanted to enter, five guys came from behind and knocked

me down, and they punched me here, and they punched her.

Q. Did you recognize any of these men?

A. One I had arrested, and I sworn four more warrants out, but I did not know the name of the guys, but one of the guys—the insulting guy, I think is the same guy he had picture taken when the strike broke out. He made front page news.

Mr. Brown: I object to that.

The Witness: He was a waiter in the Saxony Hotel.

[fol. 215] Mr. Brown: I object, Your Honor, on the ground that he thinks that it might be——

The Witness: No. A couple of weeks previous he was sitting next to me.

Mr. Brown: I object to the testimony on the ground that the witness thinks it might be.

Judge Carroll: Motion denied at this time. You have not tendered the witness.

Mr. Davis: No, sir.

By Mr. Davis:

Q. Hans, I want you to state whether or not you, in fact, recognized one of the men as the man whose picture appeared in the paper as one of the pickets?

A. Yes. I was looking for him ever since. I have a warrant out, but I do not know his name, and every day when I get through working, I am scouting around the neighborhood looking for him—even if I have a broken rib and a bum knee, and on account of that fight.

Mr. Davis: You may inquire.

Mr. Brown: I renew my motion. It has not been connected up in any way, nor has any person been identified as a member of the union or a picket, or in any way associated with the parties here.

Judge Carroll: Denied.

[fol. 216] Mr. Brown: May I be heard on that point?

Judge Carroll: Proceed. You may cross examine.

Cross examination.

By Mr. Brown:

Q. Who is Mr. Raven?
A. Who?
Q. Who is Mr. Raven?
A. That is the guy that I arrested.
Q. Where does he work?
A. Where does he work? I do not know, but I know where he lives.
Q. You do not know where he works.
A. No, I do not even know that he lived—I had to find out the next day.
Q. Do you know whether or not he is a member of the union?
A. I could not tell you.
Q. Did he ever work in the Casa Blanca?
A. I would not know that.
Q. Did you know any of the other men that assaulted you
A. By sight, yes, very well. I will never forget their faces, either.

Judge Carroll: He means, did you know them before that.
[fol. 217] The Witness: Oh, yes; especially that one guy like I said before, he was sitting next to me about two weeks ago when his picture was taken, and it made front page news in the Miami Herald. He was the first guy that started picketing.

By Mr. Brown:

Q. He works at the Casa Blanca?
A. No; Saxony, I said before.
Q. You said he worked at the Saxony?
A. Yes; as a waiter.
Q. You do not know who he is?
A. No; but I know his face very well. I do not know his name.
Q. How do you know he works at the Saxony?
A. He, himself, told me two weeks previous, when the strike broke out.

Q. Was he working at the Saxony at the time the Saxony went out?

A. In fact, we even——

Q. Just a moment, please. Was he working at the Saxony on the day the Saxony employees began the picketing?

A. He was one of the first ones outside with a sign around him.

Q. How do you know?

A. That is why he made front page news.

Q. How do you know that?

[fol. 218] A. His picture was in the paper, and he told it to me, himself, the same day. He was sitting next to me, and he had a glass of beer with me, sir.

Q. Are you still working at the Casa Blanca?

A. Yes.

Q. You go there every day?

A. Yes, I do not do any heavy work due to my broken rib and my knee.

Q. Do you know the people outside that are picketing?

A. I do not look at them.

Q. Do you know them?

A. I just mind my own business. I go to work and I get out again.

Mr. Brown: That is all.

Mr. Davis: That is all. Come down.

(Witness excused.)

Judge Carroll: How many more witnesses do you have at this time?

Mr. Sibley: I have about eight, Your Honor.

Judge Carroll: More?

Mr. Sibley: Yes. We will touch on a few hotels. I will run through them rapidly, and follow it up with the other hotels.

[fol. 219] Judge Carroll: Court will be in recess for ten minutes.

(Thereupon a short recess was taken, after which the following proceedings were had.)

Judge Carroll: You may proceed.

Thereupon—PRESTON A. THALL was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your name, sir.
A. Preston A. Thall.
Q. Are you a resident of Dade County, Florida?
A. Yes, I am.
Q. How long have you been a resident of Dade County, Florida?
A. About a year and a half.
Q. What is your occupation or profession?
A. I am the laundry consultant for the Schine hotels.
Q. You are laundry consultant for the Schine hotels?
A. Yes.
Q. Is that including the Roney Plaza?
A. Yes.
[fol. 220] Q. What is your job or your duty in connection with the Roney Plaza Hotel; what do you do?
A. I handle the laundry department and see that the work is properly done.
Q. Where is the laundry department located?
A. Immediately across Collins Avenue from the Roney Plaza, west.
Q. In what building?
A. A building known as Gaston Lodge.
Q. What?
A. In a building known as Gaston Lodge.
Q. Gaston Lodge?
A. Yes.
Q. It is across the street from the Roney Plaza Hotel; is that correct?
A. That is correct.
Q. And in that building, as I understand your testimony, you have a laundry that you supervise and operate?
A. That is correct.
Q. How many employees do you employ and work at that laundry?

A. There are 25.

Q. Were you present on the day that the strike was called--so-called strike was called, and the picket line was thrown up at the Roney Plaza Hotel?

A. I was.

[fol. 221] Q. Did you receive a visitation from a large group of men, one of whom was a defendant Smith——

Mr. Brown: I object——

Q. —on that day.

A. I did.

Mr. Gramling: Objection; leading question. You know that—that Mr. Sibley is testifying——

Mr. Sibley: I will get along, and we will get along a lot faster——

Judge Carroll: Overruled.

By Mr. Sibley:

Q. What transpired? First, how many men came to the laundry with Mr. Smith?

A. Originally, about ten men came in to the laundry.

Q. Now, were you working full blast at the laundry at that time?

A. I was.

Q. How many employees were you working at that time?

A. About 25.

Q. Now, when these ten men and Mr. Smith, the defendant, came there, what happened?

A. Well, they shouted there was a strike; people should stop working.

Q. Did they come into the building?

[fol. 222] A. They did, sir.

Q. How far into your laundry did they come?

A. Just about as far back as you could, into the building.

Q. All ten of these men?

A. That is right.

Q. And what did they shout?

A. "There is a strike; stop working."

Q. Then what happened?

A. The employees started to walk away from their machine and gathered in groups.

Q. What did you do?

A. I shouted, "Go back to work," and told these men they were trespassing; to get out.

Q. Then what happened.

A. Then they came back with Mr. Smith, and I invited Mr. Smith to come into my office, and if he wanted to talk about something, but I told the rest of the people to get out, and instructed the help to continue work, which they did.

Q. What happened when Mr. Smith came into your office?

A. He came in and I explained to Mr. Smith that we were doing work for the Gulfstream Hotel and the McAllister Hotel and the Lodge, and we suffered considerable [fol. 223] damage; the equipment was hot and operating and had to continue, and I wanted to continue the process—the work for the various hotels that were handled there.

Q. What did Mr. Smith do?

A. He said he would have to call Mr. Herman.

Q. Did he call Mr. Herman?

A. He did.

Q. Then after he talked to Mr. Herman, what did he do?

A. He walked out and he said, "That is all," and I shouted back, and I said, "Mr. Herman said I could continue to work today."

Q. You hollered that back to them, to Mr. Smith?

A. Yes.

Q. Did you then talk to Mr. Herman?

A. Yes, I did.

Q. What did you say to Mr. Herman?

A. I explained to Mr. Herman that we were doing work for the other hotels—not the Roney Plaza at the time—and that I wished to continue to operate.

Q. What did Mr. Herman say?

A. He said he thought that would be all right, or something to that effect.

Q. Now, have you continued to work since that time?

A. No, sir.

[fol. 224] Q. What happened after that?

A. Well, immediately after Mr. Smith left, and the crowd of men—especially the women were frightened and several of them were crying and excited, and so on, and I told them

to finish up what we could and not report tomorrow and I would call them when everything quieted down.

Q. What did you observe that caused these women to be crying and excited?

A. The shouting and these people coming into the plant and raising a disturbance.

Q. Since that time, then, you have not been able to operate your laundry?

A. Not to capacity.

Q. How long after was that before you could induce your help to come back there?

A. Well, after one day off, I contacted several at a time, and I was able to induce a few each day to come back.

Mr. Sibley: That is all.

Mr. Warren: Your Honor, we move to strike all of this testimony, on the ground it does not prove any allegations in the complaint.

I would just like, if I may, to make an observation, that was a little disturbance there that is cured—that is out of [fol. 225] the way. There is nothing to enjoin—no basis for an injunction. It is an attempt to enjoin something that ceased to be, you might say, current.

That would be equivalent to enjoining a condition that existed one time and it passed out of existence.

Judge Carroll: In what manner or in what cases do you consider this material, Mr. Sibley?

Mr. Sibley: Your Honor, I think that this is most material.

This is the commencement of the strike or the so-called picketing and walk-out, in which we have a man who has the courage to come here and tell your Honors how the leaders of the strike intimidated the workers, in order to run them off the job.

Fortunately, we had a man here, at the time, who had a reason why this mass approach—this attack—the screaming and yelling of these men to run these workers off the job. Fortunately, we had a man that has the courage to come in and tell you about it.

A lot of them do not have the courage to come here, so they are not working today and they are not at the Roney Plaza Hotel.

This is typical of the manner and means used by these [fol. 226] men, in order to drive away the workers on that day, and we say tresspassing (sic) and intimidation, and is a perfect example of force and intimidation and coercion used.

Judge Carroll: The motion to strike is granted.

Mr. Sibley: Come down.

Did your Honors strike all of his testimony?

Judge Carroll: That is right.

Mr. Sibley: All right.

(Witness excused.)

Thereupon—JERRY KEDRIERSKI was called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your name, sir?

A. Jerry Kedrierski.

Q. What is your occupation or employment?

A. Sergeant of Police, Miami Beach Police Department.

Q. How long have you been a member of the Miami Beach Police Department?

A. Seven and one-half years.

Q. Are you here under a subpoena tonight?

[fol. 227] A. Yes.

Q. Sergeant, did you observe any misconduct or altercation on or about April 19th, about 11 o'clock in the morning, at the Sans Souci Hotel?

A. May I refer to my records?

Judge Carroll: Yes.

By Mr. Sibley:

Q. You may refer to any data that you have to refresh your recollection.

A. Tell me which case——

Q. I am talking about the Arthur Hunt case.

Judge Floyd: When are these cases scheduled for trial at the Beach Court? Are any of them scheduled for trial?

Mr. Sibley: I think they are all going to be tried, possibly on Monday.

Judge Floyd: This coming Monday?

Mr. Sibley: As I understand it, there have been a number of warrants taken out and cross-warrants taken out, and counsel on both sides have stipulated, thus far, for a continuance of the cases—those representing the pickets and those representing the employees, and every time they have a scuffle over there, everybody runs for a warrant, on both sides, and I think they are set for Monday before the City Judge.

Judge Floyd: All right, sir.

By Mr Sibley:

Q. Do you have it, Sergeant?

[fol. 228] A. Yes.

Q. What did you observe on that day, Sergeant?

A. On that day, my partner and I——

Q. Who was your partner?

A. Detective Schemp. We were assigned to patrol the section around the Sans Souci and Saxony Hotel, on that day, to maintain law and order, and to make an arrest in case of any violations, to make an arrest.

On that day, I and my partner, at 4:30 p.m., we saw such a violation, and a picket named Augustine Arci, walking north on Collins Avenue, and we had, up to that moment, under observation a blue Oldsmobile convertible, in which two men were acting, in my estimation, suspicious, and one of these men kept referring to his watch, and this man turned out to be a Mr. Hunt who had a 4:30 appointment at the Sans Souci for a job.

They —we did not know this at the time, and he attempted to enter the Sans Souci, and at this time the picket, which we later identified Augustine Arci, kicked him in the shins, and the man almost fell to his face, and some words passed, and to prevent any further outbreak or altercation, we took Arci into custody.

We arrested him on disorderly conduct by assaulting another, to wit, Mr. Hunt.

Q. Who signed the complaint against the picket?

[fol. 229] A. I did. It was a misdemeanor committed in my presence.

Q. Now, after these picket lines were thrown up, were there policemen assigned to each of the picket lines, for the purpose of maintaining order?

A. To my knowledge, yes; and I would like to bring out one thing why I signed that affidavit. Mr. Hunt wanted to go to a doctor, and we let him go.

Q. Since this disturbance over there, and since these picket lines have been thrown up, have the hours of the members of the Miami Beach Police Department been changed any?

Mr. Gramling: We object to that as being totally irrelevant. Maybe their hours were changed and maybe—half of the United States went on daylight savings time, and as a matter of fact, it did.

Judge Carroll: Sustained.

By Mr. Sibley:

Q. Are you required to work a longer day now by reason of any rule or regulation of the Police Department because of this picketing?

A. On order of the——

Mr. Gramling: Again, we renew our objection. Whether they are working longer hours or shorter hours is a matter, I believe, of Chief Romeo Shepard's business, or the per-

[fol. 230] sonnel board of the City of Miami Beach.

Judge Carroll: Sustained.

By Mr. Sibley:

Q. Have you investigated any other incidents, Sergeant?

A. Yes, I have.

Q. Will you explain to the Court what incidents you investigated?

A. Primarily, we were assigned to make an investigation and a complaint of Mr. Robert Cannute, and this com-

plaint was felonious assault and battery, and breaking and entering, and vandalism, and robbery—all by the same complainant.

Q. Again, against whom was this complaint made?

A. At that time, the identity of the suspect was unknown.

Q. Is it known now?

A. Yes.

Q. Who was the suspect?

A. The suspect has been positively identified as William Dean Force.

Q. Have you discussed with any of the officials of the Union whether or not he is a member of the Union?

A. Yes, I have.

Q. With whom have you discussed the matter?

A. Well, I have talked to a Mr. Berlin over the phone, and I talked to Mr. Smith.

[fol. 231] Q. Have they identified him as a member of their Union?

A. They knew him, and they did not identify him as a member of the Union, but they knew him as a picket and a person which the Union, itself, loaned a sum of money.

Q. They knew him as a picket?

A. Yes.

Q. Where did this incident occur?

A. There were—there are four specific instances. Which one are you speaking of?

Q. I am speaking of the Cannutte.

A. That is right. It happened separately—not altogether. The assault and battery and robbery took place in one place, and the vandalism——

Q. Where was that?

A. The assault and battery and robbery took place in the men's bathroom at the El Morocco Hotel.

Q. Where is that, in connection with the Saxony Hotel?

A. It is across the street.

Mr. Brown: Your Honor, I move to strike this testimony of an assault and of a robbery of or at the El Morocco Hotel bathroom, as completely unrelated.

Judge Carroll: The motion to strike will be postponed [fol. 232] until after the witness' testimony is in.

By Mr. Sibley:

Q. Sergeant, where do the picket captains hand out and make their headquarters for the picket line, at the Saxony Hotel, have you observed?

A. In two instances, yes.

Q. Where?

A. Usually opposite—across the street—cater-corner from whichever hotel is being picketed.

Q. Well, for the Saxony Hotel, that was at the entrance to the El Morocco Hotel?

A. It is close by; yes.

Q. This complainant—where was he employed?

A. At the Saxony.

Q. He was an employee of the Saxony?

A. Yes, sir.

Q. What have you ascertained from your investigation, Sergeant?

A. Our investigation—reading from this man's complaint, and from the testimony that we took from him, and in front of the County Solicitor—the Assistant County Solicitor, Mr. Henderson, in which he stated that Robert Dean Force, formerly a member of the Saxony Hotel, followed him—

Mr. Warren: I object to this, on the ground it is not the best evidence; that the man's own testimony would be the [fol. 233] best evidence.

Judge Carroll: Who is he testifying about? He said this to him, now?

Mr. Sibley: He said, this is an investigation he made and ascertained from testimony taken from the County Solicitor. I do not think it is admissible.

Judge Floyd: We agree, that it is not admissible.

By Mr. Sibley:

Q. Have you been able to locate this man, Mr. Force?

A. At present, he is a fugitive.

Mr. Sibley: You may inquire.

Mr. Brown: I renew my motion, your Honor. May I be heard for just a moment on this point?

(Informal discussion off the record.)

Judge Carroll: The evidence does not appear to be material. Would you like to be heard on it, Mr. Sibley?

Mr. Sibley: You mean, the evidence of picketing, and the man going into the Sans Souci, or the evidence of the investigation that the Sergeant made?

Judge Carroll: Yes.

Mr. Sibley: I think it is cumulative. It is a strained and [fol. 234] dangerous situation, occasioned by misconduct of this Union; that it gives you the background referred to by the Supreme Court of Florida.

(Thereupon Mr. Sibley argued to the Court at this point.)

Mr. Sibley: So it is, all we have to do—and my friends have denied it here, and have been making, I thought, silly objections in connection with it—is to show a background of this Union aimed at an industry in which they fight in colored town, and they bash in heads on 10th Street, and they rob them and they beat them at the El Morocco Hotel, and we cannot show that it is one of their representatives, or my good friend over here who comes from New York ordered it to be done——

Mr. Brown: I rise to an objection.

Mr. Sibley: Let me finish.

Mr. Brown: To the home of Mr. Herman, as being New York.

Judge Carroll: Mr. Sibley will have to be the judge of his own argument.

Mr. Sibley: I apologize if my friend is not from New York. Then he is from the North.

[fol. 235] Now, if your Honors please, we started, and in my first argument to your Honors was to alert this Honorable Court to the fact that we had a Union that was striking against an industry, and that the background of that was force, violence, intimidation and threats and fear, and they scare them at the Casa Blanca, and they scare them somewheres else, and they get it in the newspapers, and they disclaim any knowledge of it because the basis of their movement is fear, and we intend to show, and we think we are showing it.

So, if your Honors, please, when we show by this witness that there was an occurrence between a man named

Mr. Force, who members of the Union identified as a picket, and identified as somebody they loaned some money to, and that that incident involved robbery and threats and a beating—we do not have to go any further than that. We are merely showing a backdrop or a background in which they have sent their picket lines and this strike, as they call it, so we insist, your Honor, that the evidence is admissible under the rules of the Supreme Court of Florida.

Mr. Warren: Does your Honor care to hear us or care to rule?

Judge Carroll: I think both sides have explained their [fol. 236] position on it.

The motion to strike will be denied. The evidence will be given its proper value.

The ruling does not indicate any peculiar feeling of materiality or immateriality.

Mr. Sibley: You may inquire.

Cross examination.

By Mr. Brown:

Q. Officer, referring to your arrest of Mr. Augustine Arci, how old is Mr. Arci?

A. I imagine he is about 45 years old.

Q. How old?

Judge Floyd: He said, 45.

By Mr. Brown:

Q. Does it show on your records there?

A. Born December 7, 1905.

Q. And how old is Mr. Hunt?

A. We do not know.

Q. As best you could judge?

A. I'd say Mr. Hunt was about 30.

Q. Did Mr. Hunt register a complaint with the police and ask for the arrest of Mr. Arci?

A. He did not have to. He wanted to go to a doctor.

Q. I asked you if he did?

A. No; he did not.

[fol. 237] Q. Did Mr. Hunt at any time express an indication that he wanted to prosecute Mr. Arci?

A. Yes, he did. I questioned Mr. Hunt before he left the scene.

Q. Now, you say you are assigned to observe picket lines in what area, sir?

A. My partner and myself drove—we cover all the hotels, and anybody that is sick or off duty, we cover for them.

Q. And you have been doing that since the picketing started?

A. Yes, sir.

Q. And in your opinion, officer, has the picketing been peaceful?

A. Fairly so; yes.

Mr. Brown: That is all.

Mr. Sibley: Come down.

(Witness excused.)

Thereupon—ROGER WOLTERS was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your name.

[fol. 238] A. Roger Wolters.

Q. Where are you employed?

A. Saxony Hotel.

Q. What are your duties?

A. I am Superintendent of Service.

Q. How long have you been employed?

A. About two months.

Q. Are you a member of any union?

A. No, sir.

Q. Since the picket lines were thrown up, have any incidents occurred, which you received any threats?

A. Yes; the first morning.

Q. Beg pardon?

A. The morning of the strike.

Q. What happened?

A. I left the hotel to meet my mother, who was across the street, and two gentlemen which I cannot identify, stopped me in front of the El Morocco and said that my life, my home and my parents and my car were not safe if I went back to the hotel.

Q. They were located where, at the El Morocco?

A. In front of the El Morocco.

Q. Is that across the street from the Saxony?

A. Yes.

Q. Have you seen those men there since?

[fol. 239] A. I have not paid any attention to look. I have not been looking for them or anything.

Q. Has anything occurred since that time, Mr. Wolters?

A. Yes. Last Saturday night, there were windows of my automobile were shot with a air rifle, I believe.

Q. Where was your car parked?

A. On the Saxony parking lot.

Q. On the Saxony parking lot?

A. Yes.

Q. That was last Saturday?

A. Yes.

Q. What happened to your car?

A. They broke the front windshield, and windows on the right hand side of the car.

Q. Any other damage occurred to your car besides that?

A. No, sir.

Q. Did anything else happen to you besides that?

A. Sunday night I received a threatening phone call in the hotel.

Q. What happened?

A. They just said that—they asked for me and I became—I acted like I was somebody else, and they said I was a liar. I told them I was not in, and they said they [fol. 240] were going to smash my car to the ground tonight; they will take care of it right.

Q. Did they do any more harm to your car?

A. No, sir. I put it in storage.

Q. Is your car in storage now?

A. Yes.

Mr. Sibley: You may inquire.

Cross examination.

By Mr. Brown:

Q. Do you know any of the people that spoke to you?
A. No, sir.
Q. You do not know—you do not recognize them as members of the Union?
A. I do not know anyone that belongs to the Union.
Q. You are certain they are not employees of the Saxony?
A. I do not see them. I do not know everyone who works there.
Q. Do you know the person who called you at all?
A. No, sir. The fellow that talked to me on the street, at the El Morocco, was an ex-bellman there, and he must have pointed me out.

Mr. Brown: I move to strike the answer an unresponsive.
[fol. 241] Judge Carroll: Granted.

By Mr. Brown:

Q. Where do you live?
A. In Miami.
Q. Where?
A. Out by Hialeah.
Q. And you come to work every day?
A. No, sir. I am staying at the hotel.
Q. How long have you been staying at the hotel?
A. Since the day of the strike.
Q. How long have you worked at the Saxony?
A. Approximately two months.
Q. Approximately two months?
A. Yes.
Q. Where did you work prior to that?
A. I was a student.
Q. Where?
A. Lindsey Hopkins.

Mr. Brown: That is all.

Redirect examination.

By Mr. Sibley:

Q. You say you were living in the hotel since the strike?
A. Yes.
Q. You did not live there before the strike, did you?
A. No, sir.

[fol. 242] Mr. Sibley: Come down. That is all.

(Witness excused.)

Thereupon—TREVOR SCOTT was called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your name?
A. Trevor Scott.
Q. Where is your home?
A. Beg pardon?
Q. Where is your home?
A. In the United States or——
Q. Where are you from?
A. From Jamaica, West Indies.
Q. What are you doing here in the United States?
A. I am a student at the University of Miami.
Q. Now, are you doing any work at the hotel at the present time? Are you working at a hotel?
A. Yes; I am.
Q. What hotel?
A. Algiers.
Q. How long have you been working at the Algiers?
[fol. 243] A. Two Thursdays ago—I beg pardon.
Q. Two Thursdays ago?
A. Yes.
Q. Has anything happened to you since you have been working at the Algiers; have you had any difficulty?

A. Not inside the hotel, itself.

Q. I did not say inside; anywheres—inside or outside?

A. In respect to the strike?

Q. Yes.

A. In respect to the strike, on the morning of the 25th, I was standing at the bus stop, about a block or two away from the hotel.

Q. When you say the morning of the 25th, what time in the morning?

A. The 24th.

Q. What time in the morning?

A. At about one-thirty.

Q. At about one-thirty in the morning—that would be the morning of the 25th?

A. That would be the morning of the 24th.

Q. Go ahead.

A. That is right.

Q. What happened?

A. I was standing there under the light, waiting for the bus, and two men drove up in a car, and I did not know [fol. 244] that it was two men at first, naturally, and until after I got in, and they asked me if I wanted a lift, and I said, "Where are you going?" And they said, "Straight down."

I said, "Are you going near the Hotel South Seas," and they said, "Yes."

So I jumped in the back.

They went down the road, and about two or three blocks, and made a right turn, and this was on Collins Avenue, I think that is the name of the hotel there—they rode in front of the hotel—they rode—and they made a run of about two or three blocks down the road, and I said, "Hey, you are going the wrong way," and they said, "We know. We are union men." And I said, "Well, what does that have to do with me?"

He said, "Well, you have no business working there."

I said, "I do not know why," because I have to go to school at the University, and I have permission to work from the Immigration Authorities, and I do not see what this has to do with me.

So I tried to explain to him that where I come from, things like that are not done, and I did not understand

what the whole thing was about in any case.

Well, the general attitude, from the things that they said that I had no right to take somebody else's job, and [fol. 245] this, that and another, and I told them that I did not know.

And, well, I began to get a bit scared, because I did not know exactly what was happening. I mean, they turned off the wrong road, when they are saying they are going straight down, and I started looking around inside the car if there was any way to get out of it, and on the back of the car there was a yellow Studerbaker, (sic) as nearly as I can make it—I think it was a yellow car—approximately '47 or '48 model, and on the back—on the back window, when I was looking around, I saw a sticker with a mark, "Union," on the back.

Q. Now, what happened after that?

A. Well, sir, I went through about two or three green lights, and they headed toward the west shore—I think west—yes, sir.

Q. Towards the Bay?

A. Beg pardon?

Q. Towards the Bay?

A. Yes; towards the Bay, and I just waited. I was hoping for a red light, if there were some people, because I did not know what to do one way or another, and when they came to a red light and stopped eventually, and I jumped out of the car and I was in the back, and I jumped out quickly, and he yelled out—one of them yelled out that, "You are lucky." I also——

[fol. 246] Mr. Sibley: You may inquire.

The Witness: I also neglected to mention that I was asked if I was Spanish, and I said, "No"; that I was British, although I did have some Spanish blood in me.

The two gentlemen in the car, if I can call them that, also had had—they had Spanish accents—at least it sounded like Spanish to me.

Mr. Sibley: You may inquire.

Cross examination.

By Mr. Brown:

Q. This was a sedan that you were riding in; it had four doors?

A. I told you that I jumped out the back. It should have four doors.

Q. It had four doors?

A. Yes.

Q. And you were sitting in the back seat, were you not?

A. Yes.

Q. Pardon me for repeating it, but I am trying to get it clear.

A. I did not hear that.

Q. I am trying to get it clear, I said.

A. O. K.

Q. Was there any—were either of the two men sitting [fol. 247] in the back with you?

A. No. They were both in front.

Q. Did either of the two men at any time say that you could not leave the car?

A. No; they did not say that I could not.

Q. Answer my question—yes or no.

Judge Carroll: He answered your question directly.

By Mr. Brown:

Q. I asked you the question directly—did either of the men say that you could not leave the car—tell me yes or no?

A. I did not ask them.

Q. Pardon me?

A. I did not ask them.

Q. I did not ask you whether you asked them.

A. Why should they tell me I can't leave the car if I did not ask them?

Q. When you started to leave the car, did they try to stop you in any way?

A. They did not have time—believe me.

Q. I did not ask you that.

A. I did not wait to find out. I do not know.

Mr. Brown: Would the Court ask the witness to respond?

Mr. Sibley: He said he did not know.

Judge Carroll: The witness should listen to the ques-
[fol. 248] tion and try to answer it directly.

The Witness: You want definitely, yes or no?

By Mr. Brown:

Q. Yes.

A. May I ask you something?

Q. Don't ask me any questions. If you do not know, say you do not know. If you do know, then answer, please, yes or no.

A. All right; I do not know.

Q. Did either of the men at any time make any move to harm you?

A. Not physically; no.

Q. Did they make any move to harm you mentally?

A. Well, the fact that they said they were going one way and went another the next way—that disturbed me. Would it not disturb you?

Q. Where were you going?

A. I was going to the South Seas Hotel.

Q. Where is that located?

A. That is approximately, I think, between ten and twenty blocks from the Hotel Algiers.

Q. On what street?

A. On the same street.

Q. Where were these two men going, do you know that?

A. At the time they picked me up?

[fol. 249] Q. Did they tell you where they were headed for?

A. If you remember my statement previously, I asked, "Where are you going," and they said, "Straight down," and I said, "Are you going as far as the South Seas Hotel," and they said, "Yes," and I jumped in.

And then they turned right a couple of blocks down, and I said, "Hey, you are going the wrong way," and they said, "Yes; we know. We know that. We are Union men."

Wouldn't you be disturbed if you were me?

Q. I did not ask you that. Now, did the men at any time threaten you?

A. I told you, no, physically.

Q. I asked you if they harmed you before and you said, no, physically?

A. Yes.

Q. Now, you say that they did not threaten you physically, either?

A. They—the only thing they said to me——

Q. Please answer my question yes or no.

A. Yes; they threatened me.

Q. What did they say?

A. They said, "You better not be back at work there tomorrow night."

Q. Did you go back there the next day?

A. Yes.

[fol. 250] Q. Did anybody bother you?

A. No.

Q. Has anybody bothered you at any time that you have gone to work? Does it take so long to think of an answer for that?

A. Sometimes, yes.

Q. Tell us the truth.

A. You mean, anybody from the Union?

Q. Yes.

A. Not that I know of; no.

Q. How long did you work there at the Algiers?

A. I began there two Thursdays ago.

Q. And how did you happen to go to the Algiers for work?

A. How did I happen to go there? I just walked in.

Q. How did you know there was a job available there?

A. I did not know there was a job available. As a matter of fact, I went in there to sell them something, and I ended up by getting a job. It was quite a joke.

Q. Do you have a police card?

A. What?

Q. Do you have a police card?

A. Yes, I do.

[fol. 251] Q. When did you procure it?

A. When did I get it?

Q. Yes.

A. Today.

Q. Who told you to get it?
A. Who told me to get it?
Q. Yes.
A. The police officer that came up there.

Mr. Brown: That is all.
Mr. Sibley: That is all. Come down, please.

(Witness excused.)

Thereupon—VAL TURNER was called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your name.
A. Val Turner.
Q. What is your business?
A. Business—manager of the bar at the Saxony Hotel.
Q. How long have you held that job?
A. June will be four years at the Saxony Hotel.
Q. Are you a member of the Union?
[fol. 252] A. Local No. 133.
Q. Mr. Turner, since they threw a picket line up at the Saxony Hotel, have you had any difficulty there?
A. Well, they threw the picket on Wednesday, April 13, and the next night, on a Thursday, I go out to get my car with Miss Grubber, the night auditor, and I found my car—the tires—four tires slashed and the gasoline tank ripped out of my car.
Q. Where was your car parked?
A. On 34th Street, near the Robert Richter, between Collins Avenue and the Beach.
Q. Do you know who did it?
A. No.

Mr. Sibley: You may inquire——

By Mr. Sibley:

Q. What did it cost you to get if (sic) fixed?
A. Close to $200.

Mr. Sibley: That is all.
Mr. Brown: No cross examination.

(Witness excused.)

Mr. Brown: I move that his testimony be stricken. It seems to be a case of vandalism, completely unconnected. There are thousands of such cases all over the United [fol. 253] States every day, and I do not think the Union can be accused in each one of these.

Judge Carroll: Motion denied, on the basis stated, as to the last testimony.

Mr. Gramling: Sir, by the same token, would we be permitted to present to you, if properly certified, from the Police Department of Miami Beach, and of Miami, our neighboring municipalities, the number of vandalisms throughout the year in each of such municipality, particularly with reference to Miami Beach, which would emphasize and show you that that is going on all the time and everywhere, and to take one isolated vandalism——

Judge Carroll: We will rule on the matters when they come up in the testimony.

Thereupon—MARGUERITE GALE was called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your name.
A. Marguerite Gale.
Q. Where are you employed?
A. Algiers Hotel.
[fol. 254] Q. How long have you been employed there?
A. Since 1953.

Q. In what capacity?

A. Linen room woman.

Q. You were employed there at the time the picket line was thrown up?

A. Yes.

Q. Since the picket line has been thrown up, have you had any difficulties or any disturbances or interruptions in your work?

A. Not in my work. I have had telephone calls.

Q. What kind of telephone calls do you get?

A. Well, on Monday night, they called and asked me if I had thought that I was going to join the Union yet, and if I had not, I better think deep.

Q. Was that the Monday before they put up the picket line?

A. That was Monday, the 18th, before the picket line.

Q. After the picket line was put up, did you get any more telephone calls?

A. No, sir.

Q. Now, do you recall just prior to the time the picket line was put up, that you were asked to sign a card to appoint a bargaining agent?

[fol. 255] A. Yes.

Mr. Gramling: I object to his leading the witness. If she cannot recall any more than that, there is no use of him prompting her.

Judge Carroll: Overruled.

By Mr. Sibley:

Q. Who approached you in reference to that?

Judge Carroll: I might say, counsel, that leading questions on prelimary (sic) matters to expedite this are not particularly objectionable. But if he gets into——

Mr. Gramling: I feel so strongly——

Judge Carroll: Make an objection if you feel you should make it.

By Mr. Sibley:

Q. Who approached you, Miss Gale?

A. One of the workers at the Algiers.

Q. Did he present the card for you to sign?
A. Yes.
Q. The first time he presented it, did you sign it?
A. No, sir.
Q. The second time it was presented, did you sign it?
A. Yes, sir.
Q. What was said at the time that it was presented the [fol. 256] second time?
A. They said that the Union would help us, and if I would sign it, I would help the cause.
Q. What did they say if you did not sign it?
A. Well, they did not say anything at that time if I did not sign it.
Q. I mean, the second time?
A. They just said that I should sign it to help the cause.
Q. What about the first time; what did they say?
A. They asked me to sign it.

Mr. Gramling: She already testified about both times, and I object to it. He is trying to suggest to her, and certainly this is leading. We are certainly beyond the preliminary stages.
Judge Carroll: Overruled.

By Mr. Sibley:

Q. Did you have a conversation with Harold Hammer?
A. Yes; we talked.
Q. Beg pardon?
A. Yes.
Q. What was his position at the Algiers before the strike?
A. Linen room man at night.
[fol. 257] Q. What did he say to you in reference to signing the card?
A. He said I should sign it, because it would help me and help him in seniority at the hotel, and also in our money and hours.
Q. Did he make any statement of what would occur if you did not sign it?

Mr. Gramling: I object to it. He is leading the witness.
The Witness: He said I would be out of work if I did not sign it.

By Mr. Sibley:

Q. Did you sign it?
A. Yes.

Mr. Warren: Your Honor, I move to strike all of the witness' testimony on the ground that it does not prove any allegations of the complaint, and it does not prove any violence and it does not prove any coercion, and it does not prove any intimidation, and it does not even show any improper act.

(Informal discussion thereupon ensued off the record.)

Judge Carroll: The motion is denied.
Mr. Brown: No cross examination.

(Witness excused.)

[fol. 258] Thereupon—FRANK SHORT was called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your name.
A. Frank Short.
Q. Where are you employed?
A. Saxony Hotel.
Q. What are your duties there?
A. Lobby porter.
Q. How long have you worked there?
A. Since the 14th of April.

Judge Floyd: This year?
The Witness: Yes.

By Mr. Sibley:

Q. Did you have occasion, about 12:15 a.m., when you were boarding a "M" bus at Lincoln Road and Lenox Avenue?
A. At 12:45.

Q. What day was that, approximately?
A. I got on the bus—the "M" bus at 12:15 Saturday night.
Q. Last Saturday?
A. Last Saturday night.
Q. Go ahead.
[fol. 259] A. Sunday morning, at 12:15—12:45, I got off the bus at Lincoln Road, and that was on Lenox Avenue, corner of Lincoln Road and Lenox Avenue, and as I got off the bus, there were three men.
Q. Where did you get——
A. I got off the bus.
Q. Go on.
A. I got off the bus, and as I got off the bus, there were three men that got off at the same time that I did. One was in front, and two at the rear of the bus.
So when I got off the bus at that corner, I go across the corner, and as I go across the corner, these three men follow me and stop me at the corner.
Q. Where had you taken that bus; where did you get on that bus?
A. I got on the bus across the street from the Saxony Hotel.
Q. Go on.
A. These three men stopped me and one man said, "Hey there, fellow. We are going to take care of you tonight." And I held up my hands and backed off and I said, "Wait a minute fellows. I do not want any trouble with anybody."
So, one fellow said, "You are the scab that got my job, and we are going to take care of you," and the other fellow said, "We are getting hungry," and so I said, "Fellows now, [fol. 260] I don't want to get beat up. I have got $15 here in my pocket and I will give you $5 each if you will not bother me," and one of the fellows turned around and said, "What about it?" And they said, "O. K."
I pulled out $15—three $5 bills—and gave each one of them $5 apiece, and said, "Are you going to let me go," and one of them mentioned the fact that, "You better not report back to work."
So I gave them the $5 bill, each one, and I took off, and they did too.

Mr. Sibley: You may inquire.

Cross examination.

By Mr. Brown:

Q. Did you ever see these men before or after that incident?

A. No, sir.

Q. Did you report this to the police?

A. Yes, sir.

Q. Did you give them a description of the men?

A. Yes, sir.

Q. Are they working at the Saxony?

A. I am working.

Q. Are you working at the Saxony?

A. I am working at the Saxony.

Q. Where did you work?

A. Self employed.

Q. Where?

[fol. 261] A. Richfield, Virginia.

Q. How did you happen to come to Miami?

A. I have been on vacation for about three months.

Q. What were you working at as a self employed individual?

A. Retail grocery store.

Q. You have been here about three months?

A. Yes.

Q. How did you happen to start work at the Saxony?

A. My money was getting low, so I was seeking employment, and I noticed the ad in the paper.

Q. You saw the ad in the paper?

A. Yes.

Q. Do you have a police card?

A. Yes, sir.

Q. When did you get it?

A. As soon as they---they accepted my application and they told me the first thing I had to do was get a police card.

Q. You do not know who these three men were, do you?

A. No, sir.

Q. Did you see these three men get on the bus where you got on?

A. No, sir; these three men were on the bus.

[fol. 262] Q. They were on when you got on?
A. Yes.
Q. They were on before you got on?
A. Yes, sir.

Mr. Brown: That is all.
Mr. Sibley: Come down.

(Witness excused.)

Thereupon—PATRICIA FITZGERALD was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your name.
A. Patricia Fitzgerald.
Q. Where are you employed?
A. Saxony Hotel.
Q. How long have you been employed there?
A. Four years.
Q. What is your position there?
A. Waitress in the Noshery.
Q. Were you employed there at the time the picket line was put up?
A. Yes.
Q. Do you recall what occurred after you finished work on the night of April 13th?
[fol. 263] A. Yes.
Q. Was that after the picket line was put there?
A. Yes, sir.
Q. Will you tell the Court what occurred?
A. We were coming out from work to go home, and this friend of mine was going to drive us all off, and while I—one of the little boys that worked in the kitchen went to grab me. That was Willie.
Q. Was Willie on strike then?
A. He was wearing a sign.
Q. Wearing a sign. Go ahead.

A. And he went to grab me, and this friend of mine stepped between us and told him to keep walking; he said, "That is all right. We will get her when you are not with her."

Q. What?

A. "We will get her when you are not with her."

Q. Since that time, have you been annoyed by—who was with you at that time.

A. The kids that work, and Al Barlow.

Q. Who was it that stepped between you?

A. Al Barlow.

Q. And have you been annoyed at any time since that time?

A. Well, telephone calls at home.

[fol. 264] Q. You get telephone calls at home?

A. I did not until I——

Q. What?

A. Until I stopped the phone.

Q. You cut the phone off?

A. At the switchboard. They call early in the morning and insist on talking to me, and when the operator puts the call through, I would answer and they would hang up.

Q. How many times a night would you get calls like that?

A. Three or four every morning.

Q. You say, "morning." What time would they be?

A. I get off work at 2:00 o'clock, and I sleep during the night, so this would be 9:00 or 10:00 o'clock in the morning.

Mr. Warren: I move to strike this testimony about getting telephone calls and then hanging up. That is a widespread, frequent, and almost universal occurrence.

(Informal discussion off the record.)

Judge Carroll: Motion denied.

By Mr. Sibley:

Q. Did you get these telephone calls before the picket line was thrown up?

A. No, sir.

Q. That just occurred after the picket line was thrown up?

A. Yes.

[fol. 265] Q. What did you do with the phone?

A. I live in a hotel where there is a switchboard, and they do not put any calls through to my apartment.

Mr. Sibley: That is all.

Cross examination.

By Mr. Brown:

Q. Have you been working every day since the picketing started?

A. Yes.

Q. You never had any trouble since then in going or leaving?

A. They cannot get me in a cab.

Q. You never had any difficulty at all?

A. No.

Q. Nobody has annoyed you?

A. No; only with telephone calls.

Mr. Brown: That is all.

(Witness excused.)

Mr. Warren: May it please your Honor, it was indicated, I believe, that we might recess at 9:30. What is the Court's attitude to proceed to a later hour?

Judge Carroll: We had not intended to go too long.

Mr. Sibley: Your Honor, may I suggest that we take a recess at this time? Outside of putting some of the hotel [fol. 266] owners on to establish no negotiations, I do not think it will be over one or two witnesses. Outside of that, I ought to conclude my testimony within a half hour.

Mr. Gramling: If he is going to put on some of those hotel owners, we are not going to be through in a half hour. I have been waiting for them. There is going to be some cross examination.

Mr. Sibley: I will put them on now, but I do not know——

(Discussion off the record.)

Judge Carroll: How long do you think it will take you to finish your witnesses?

Mr. Sibley: Not over 45 minutes.

Judge Carroll: If we take a short recess, do you think you can finish by 10:30 with your presentation of your evidence?

Mr. Sibley: It will be a strain.

Judge Carroll: You said 45 minutes.

Mr. Sibley: I meant in the morning.

Judge Carroll: We will take a recess for five minutes.

(Thereupon a short recess was taken after which the following proceedings were had.)

The Clerk: The court will come to order.

[fol. 267] Judge Carroll: We have decided to recess this case without going any further tonight. We will resume at 8:30 o'clock in the morning.

(Thereupon the hearing was adjourned to Saturday, April 30, 1955, at 8:30 o'clock a.m., at the same place.)

[fol. 268]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

IN CHANCERY

No. 178554-D

[Title omitted]

Miami, Florida,
Saturday, April 30, 1955.

The above-entitled cause came on for further hearing before the Hon. Charles A. Carroll, Division D; Hon. Grady L. Crawford, Division F; and Hon. Robert L. Floyd, Division J, Judges of the above-styled Court, at the Courthouse, Miami, Florida, on Saturday, April 30, 1955, at 8:30 o'clock A. M., pursuant to adjournment on Friday, April 29, 1955.

[fol. 269] Judge Carroll: Are you ready to proceed?

Mr. Sibley: Yes.

Judge Carroll: Go right ahead.

Mr. Sibley: Mr. McIntyre, will you take the stand, please?

Mr. Gramling: Just a moment, please, if your Honor, please, I wonder if perhaps, Judge George E. Holt could be contacted this morning to clarify that which was mystifying, and that is the status of two of these cases.

In one of them the testimony has been extensive and exhaustive, and the Chancellor currently in charge of it has not heard nor seen the witnesses.

Could we, perhaps, clarify that on the off chance that His Honor might be at home this morning?

Judge Carroll: Well, I do not see how you can do that unless he was here, and you could explain the situation to him. I think though, of what was said yesterday, both sides were going to have something to say about it. The court is not open for those purposes on Saturday, so we will just have to accept the situation the way it is, and proceed and take that up later.

Mr. Warren: Does Your Honor suppose we could adjust this situation, if counsel for the plaintiff would reconsider and stipulate?

Judge Carroll: I do not see any necessity to go into it again. If counsel want to do that, it might be voluntary, otherwise we will leave it like it was.

Mr. Sibley: Let the record clearly show that I will not stipulate. I made it plain yesterday, last night, and make it [fol. 270] plain again.

I might state into the record, I resent counsel's efforts to embarrass me with one member of the Court.

Mr. Warren: I apologize.

Judge Carroll: I do not consider it embarrassment. There has been an effort to get the matter straightened out, which is somewhat unusual, and I think counsel is entitled to express their views on it, but I think the Court has also indicated that we will go ahead, just as it is.

Mr. Warren: I apologize.

Thereupon—RALPH MCINTYRE was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. State your name.
A. Ralph McIntyre.
Q. Where are you employed?
A. Monte Carlo Hotel.
Q. How long have you been employed there?
A. Since the 16th of July last year.
Q. What is your capacity?
A. Manager.
Q. Was a picket line thrown up and is there a picket line up at the Monte Carlo at the present time?
A. There is one at the present time that was thrown up on the morning of—April 13th, at 6:00 o'clock in the morning.
[fol. 271] Q. Prior to April 13th, or prior to the time that the picket line was thrown up at your hotel, were you invited, or was the management of your hotel invited to enter into negotiations with Local Union 255 with reference to labor conditions and wages and hours or conditions of employment of your employees of the union representing itself to be the agency to negotiate for a majority of your employees?
A. No, sir.
Q. A picket line was thrown up without any effort having been made to negotiate with management of your hotel?
A. Yes, sir.
Q. What has been the effect of that picket line at your hotel?
A. Well, we have lost a lot of business on account of it. We have had quite a few cancellations. In fact, I have about four hundred rooms right here in my folio that were cancelled due—or between three hundred fifty and four hundred rooms—that were cancelled due to the picket line being thrown up.

Mr. Gramling: I move to strike the last—due to the picket line, unless he can fortify that with some facts.
Mr. Sibley: I will fortify it if you will give me a chance.
Judge Carroll: Denied.

[fol. 272] By Mr. Sibley:

Q. Was that a convention?

A. Yes, it was a convention.

Q. What was the convention?

A. American Federation, International Brotherhood of Papermakers.

Q. They cancelled because a picket line was thrown up there; is that correct?

A. As of last Saturday, yes, sir. It was cancelled as of last Saturday.

Q. Has it materially crippled your operations there?

A. Yes, sir. When the picket line was thrown up, I had three employees in the hotel.

Q. Did you observe the picket line as soon as it was put up?

A. No, sir. It was about a quarter of seven before I got—before I was down at the hotel then.

Q. Approximately what time was the picket line thrown up?

A. The night people told me it was put up at 6:00 o'clock in the morning.

Q. When you arrived, were some of your employees in the picket line?

A. Yes, sir.

Q. Marching up and down with banners?

A. Yes.

Q. What does the banner say?

[fol. 273] A. It says, "This hotel refuses to negotiate"—I do not know the exact words. That is the heading of it, in big letters. The bottom of it reads, "Local 255" or something to that effect. I do not know the exact wording of it.

Mr. Sibley: You may inquire.

Cross examination.

By Mr. Brown:

Q. Would you repeat your name?

A. Ralph McIntyre.

Q. Mr. McIntyre, you say that there were no negotiations at all with your hotel?

A. No, sir.

Q. Do you know Mr. Ed Miller?

A. Yes.

Q. Did you ever talk to him about a contract at the Monte Carlo?

A. No, sir.

Q. Do you know whether anybody connected with the Monte Carlo ever did?

A. I could not say. I did not, since I have been there, sir. I have been there since the 16th of July last year when the hotel—Mr. Hankoff sold the hotel. I was appointed manager of the hotel.

Q. As a matter of fact, last fall, was there not extensive negotiations with the Monte Carlo and the International Union of Hotel and Restaurant Employees with regard to the possibility of a contract?

[fol. 274] A. Not through me.

Q. But through some other officials of the hotel?

A. No, sir; not as I know of.

Q. You are sure of that?

A. I am positive of that.

Q. Weren't there negotiations over a period of weeks with the Monte Carlo?

A. Not to my knowledge.

Q. You never heard of it?

A. No.

Q. In any way whatsoever?

A. No.

Q. Is your hotel a member of the Miami Beach Hotel Owners' Association?

A. Yes, we are.

Q. Did you hear of Mr. Herman's conversation with the representative of the Association with regard to negotiations?

A. I read in the newspaper—I saw a copy of a letter in the newspaper. I saw it in the Union paper, I believe, first, a copy of the letter that Mr. Herman sent to the Hotel Association.

Q. Well then, you do know there was an effort made to negotiate with the Association?

Mr. Sibley: I object to that.
Judge Carroll: Overruled; he can answer it.

[fol. 275] By Mr. Brown:

Q. You do not know if there was an effort made to negotiate with the Association, of which your hotel is a member?

A. Through Mr. McKaskill, yes; through the newspaper, the union newspaper that was distributed throughout the hotel.

Q. Was your hotel willing to negotiate with the union?

A. I am not in a position to negotiate, sir. I am only the manager. I do not have anything to say regarding the policy of the hotel, or as union negotiations go.

Q. Well then, it would not have done any good to negotiate with you then?

A. No, sir.

Q. Who would it have done good to negotiate with?

A. My boss is Mr. Ben Klein.

Q. Where is he located?

A. He lives at the Shelborne Hotel.

Q. Can you state, as a matter of your own knowledge, whether or not there have ever been any negotiations between your boss and this union?

A. Not to my knowledge; no, sir.

Q. You do not know whether there have or whether there have not been?

A. No, sir; neither way.

[fol. 276] Q. Is your boss in the courtroom today?

A. I did not see him this morning; he was here last night but I have not seen him this morning. I understand he is going to be here.

Q. Are you familiar with the petition that was filed in this case, in behalf of the Monte Carlo Hotel suit against the union?

A. I signed it. I read it.

Q. In that petition, you state that the union does not represent any of your employees.

A. To my knowledge, some of the people do belong to the union—some of them have been there five or six years—some of the employees in the hotel.

Q. Why did you swear to a falsehood? Why did you say in your petition, we do not represent any of your employees?

A. Most of the employees.

Judge Carroll: Just a moment. Are you referring to the allegations in the Bill of Complaint?

Mr. Brown: Yes.

Judge Carroll: We will take notice of the fact that they are drawn by attorneys, and it is just a waste of time to try to pin down a witness to the pleading allegations.

By Mr. Brown:

Q. Within your knowledge, a substantial number of employees are members of the union; isn't that correct?

[fol. 277] A. Most of the people that I know belong to the union, belong to it—have been members of the union for years of No. 133. I believe it is over in Miami, to my knowledge—I did not know of any employees belonging to Union No. 255. Some of the waiters, I understand, have been with the Union fifteen or twenty years. They were in the hotel. They were employed four to six years.

Q. Have you observed the picketing at the Monte Carlo?

A. Yes, sir.

Q. Do you live at the Monte Carlo?

A. No, sir.

Q. So you come and leave each day?

A. Every day; sometimes twice a day.

Q. Has the picketing been peaceful?

A. It has, yes, sir, in front of the Monte Carlo Hotel.

Mr. Brown: That is all.

Redirect examination.

By Mr. Sibley:

Q. Have you observed any improper conduct away from the Monte Carlo Hotel? In front of it?

Mr. Gramling: He might have observed improper conduct in Homestead. I object to that.

By Mr. Sibley:

Q. Had you observed any improper conduct away from the Monte Carlo Hotel, in front of the Monte Carlo or [fol. 278] adjacent to it?

Mr. Gramling: I object again, unless he identifies the word or defines the word, "adjacent".

Mr. Sibley: I will.

Mr. Gramling: We heard of stuff as far as Coloredtown, in Miami, that he made out to appear adjacent.

Mr. Sibley: I will. May he answer the question?

Judge Carroll: Overruled.

By Mr. Sibley:

Q. Answer the question.

A. There was some difficulty over in a parking lot across the street from the Monte Carlo Hotel. I think the Sherry Frontenac Hotel owns part of the parking lot—the public parking lot.

Q. How far are you from the Sherry Frontenac?

A. Next door.

Q. The Sherry Frontenac——

Mr. Sibley: That is all.

Mr. Brown: That is all.

(Witness excused.)

Thereupon—Louis Kenin was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

[fol. 279] Direct examination.

By Mr. Sibley:

Q. State your name.

A. Louis Kenin.

Q. Where do you reside?

A. On Miami Beach.

Q. What is your occupation or profession?

A. I am the president of the operating company of the Hotel Algiers.

Q. The Algiers.

A. That is right.

Q. Mr. Kenin—is there a picket line in front of your hotel?

A. Yes, there is.

Q. When was it placed there?

A. On the morning of the 21st.

Q. Did you receive any telephone calls or have any conversations with Mr. Herman, representing Local 255, prior to the time the picket line was thrown up?

A. During the morning of the 15th, I received a call from a man who said he was Mr. Herman; that he wanted to make an appointment with me for that day to talk things over.

I told him I could not do anything without Mr. Levinson being present, and Mr. Levinson was due in town on that very same day, but that I did not know at what time he would be in.

The next thing I know he said something there being [fol. 280] some dissatisfaction among the employees, and if anything happened, it would be our fault, and that was the end of our conversation.

Q. That is the only communication that you have had from Local 255 before this picket line was thrown up?

A. Yes, that is the only thing.

Q. What has been the result of the picket line in your hotel?

A. As a result, we have had to shut down our dining room, shut down our catering department, shut down our general operation, which curtailed—our coffee shop, which is only in partial operation,—we have had a general reduction throughout the hotel.

Mr. Sibley: That is all.

Cross examination.

By Mr. Brown:

Q. When you notified Mr. Herman that you could not negotiate without Mr. Levinson, did you ever call Mr. Herman back, or did Mr. Levinson, when he was available?

A. No, I did not.

Q. Why?

A. I thought Mr. Herman would call back to arrange for another appointment when it pleased him.

Q. Well, did Mr. Levinson—he was to come in town, was he not?

A. That is right.

Q. When he did come in town, you did not notify Mr. Herman?

A. I did tell him he was due in that very day.

Q. Mr. Herman fully informed you that unless there [fol. 281] were negotiations, there would be some kind of work stoppage?

A. He did not put it exactly that way.

Q. You got the gist of his talk?

A. Yes.

Q. And in spite of that advance notice, on the 15th of April, you let six days go by when Mr. Levenson was available, and made no effort to stop this work stoppage, did you?

A. No. I did not feel that—it was not up to—that it was for Mr. Herman to make his next move for the appointment. He was the man who asked for an appointment—just as I asked for an appointment elsewhere, if it cannot be granted, and I make the next step again to get another appointment.

Q. You thought it was a matter of protocol as to who should make the next step—you were willing to take the risk of a work stoppage rather than make the first move?

A. I did not see any risk of a work stoppage there.

Q. Now, you have a large—rather, you had a large wedding scheduled for the Algiers, did you not, in this period between the 15th and 21st?

A. There probably was one.

Q. About the 20th, was it not? Was there not a large wedding affair scheduled?

A. There were several affairs through that period.

[fol. 282] Q. As a matter of fact, didn't you know, through published statements issued by the Union, that the work stoppage at your hotel had been delayed so that this wedding could be held without interference, and without any discomfort for the employers?

A. I did not see any such statements.

Q. You did not know that that appeared in the press?

A. I did not see it.

Q. You did not see it?

A. No.

Q. Did you tell Mr. Levenson of your conversation with Mr. Herman?

A. I did.

Q. What did he say to you then?

A. Just wait until Mr. Herman calls again.

Q. Did he say he was willing to negotiate with Mr. Herman?

A. We did not discuss it. We did not know just what Mr. Herman wanted.

Q. I will make that clear to you. Will you tell the Court your conversation with Mr. Levenson with regard to Mr. Herman's call. as nearly as you can recall that conversation?

A. It was very brief. I just related that Mr. Herman [fol. 283] had called and that we would just sit by until we hear further.

Q. Did Mr. Levenson, in any way, indicate to you whether or not he was willing to negotiate with the Union for the Algiers?

A. No. There was no indication.

Q. Do you know what his attitude is today?

A. No.

Q. There is no attitude on this subject at all?

A. Not right now.

Q. Do you know what it would take to produce a determination of this question as to whether your hotel would negotiate?

A. I do not.

Q. Do you live in the hotel, Mr. Kenin?

A. No.

Q. You come and go each day, then?

A. That is right.

Q. So, you have been able to observe the picketing each day as you arrive and leave?

A. Yes.

Q. It was peaceful?

A. On the whole, yes.
Q. Beg pardon?
A. On the whole.

Mr. Brown: That is all.

[fol. 284] Redirect examination.

By Mr. Sibley:

Q. Let me ask you just one other question. Since the picketing started, are there any of your employees now living in the hotel?
A. Yes.
Q. How many rooms do you have occupied by employees?
A. They range from half a dozen up to a dozen, and some nights they have been more than that.
Q. Was that so prior to the picket line?
A. No, sir.

Mr. Sibley: That is all.
Mr. Brown: No further questions.
Mr. Sibley: Come down.

(Witness excused.)

Thereupon—Ralph E. Snider was called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your name.
A. Ralph E. Snider.
Q. Where do you reside?
A. At the present time, the Sea Isle Hotel.
[fol. 285] Q. What is your connection with the Sea Isle?
A. I am the President and General Manager of the Sea Isle Hotel.
Q. Is there a picket line in front of the Sea Isle Hotel?
A. Yes, there is.

Q. When was it placed there?

A. Three o'clock on the afternoon of April 22nd.

Q. When the picket line was thrown up, were your employees in the picket line?

A. Some of them; yes.

Q. At the time it was thrown up?

A. The original picket line had some of our employees that were not on that shift.

Q. You received a telegram from Mr. David Herman in reference to negotiating with Local 255; is that correct?

A. That is right.

Q. Do you recall the exact date?

A. I do not recall the date that I received the telegram.

Q. After you received the telegram, did you have a conference with Mr. Herman?

A. After I received the telegram, well, I have had several conferences with Mr. Herman. I do not remember whether I had one about that particular telegram. Well, may I [fol. 286] answer that again? I had conferences with Mr. Herman—that is correct.

I told Mr. Herman—I told him I sent that telegram to my attorney, Mr. Sibley, and authorized him to answer that telegram and make an appointment with Mr. Herman to negotiate for the Sea Isle Hotel.

Q. Did you send for the letter that I wrote to Mr. Herman and have it delivered?

A. Mr. Herman called me after I told him that I had this—I had authorized you to send a letter, and called me the following morning and told me the letter had not been received, and he would like to have that letter that day.

I called Mr. Sibley's office and told him that I was—I wanted that letter delivered to Mr. Herman on that day, and made arrangements for it to be picked up at his office and delivered it in person to Mr. Herman.

Q. I tender you the letter and ask you—a copy of the letter which is attached to your complaint—and ask you if that appears to be the letter that was delivered to Mr. Herman?

A. That is a copy of a letter that was delivered to Mr. Herman.

Mr. Sibley: We tender in evidence a copy of the letter and ask that the one attached to the Bill of Complaint be marked as an exhibit in this cause.

[fol. 287] Judge Carroll: Any objection?

Mr. Brown: No.

Judge Carroll: Mark it.

(The document just referred to was thereupon marked Plaintiff's Exhibit No. 9.)

By Mr. Sibley:

Q. Now, you have had a number of conferences with Mr. Herman since this date of April 15th, have you not, Mr. Snider?

A. Yes, I have.

Q. He called you a number of times on the telephone?

A. That is correct.

Q. You and Mr. Herman are not at all unfriendly, are you?

A. Not at all.

Q. Did you receive a call from him this morning?

A. I received a call from him this morning.

Q. What did Mr. Herman say?

A. Mr. Herman asked me how things were going, and suggested that if this decision were to go against the hotels, the possibility that it might—that it might be a very good time for the hotels to attempt to negotiate with Mr. Herman and get a more favorable deal now than we might get if the decision for injunction had gone against the hotels.

[fol. 288] Q. What else did he say, Mr. Snider?

A. He said, that now that Judge Cannon is out of the thing, he did not think that we would have as good a chance to win.

Mr. Brown: I move that be stricken, your Honor.

Mr. Sibley: I insist, your Honor, that it is very pertinent, under the circumstances. Just a minute. Let me——

Mr. Brown: I made a motion. I would like to be heard.

Mr. Sibley: Go ahead, if you have something to say.

Judge Carroll: On what ground?

Mr. Brown: I think it is highly immaterial to the issues here in any way—first of all, the events described have

occurred after the filing of the Bill and amended Bill, and they are not within the province of the pleadings.

Secondly, it is immaterial and obviously an attempt to discredit the Court and to cast reflection upon the Court, which should not be permitted.

It is completely irrelevant to the issues at hand as to [fol. 289] whether or not there is a violent picketing in the case.

There is a further ground for objection, I might say—there is one further ground that is quite fundamental, and that is that Courts have always encouraged efforts to conciliate and negotiate disputes; and conversations in the course of attempts to settle disputes have always been ruled out of evidence, otherwise parties could never get together, if their conversations in the course of an attempt to negotiate a settlement could then be brought into Court and used; so I object and say to your Honor that this precedent to overturn the time-honored tradition of encouraging settlements should not be disturbed.

Judge Carroll: The motion is denied.

By Mr. Sibley:

Q. You were not present, sir, at the meeting between Mr. Herman and myself, were you?

A. I was not.

Q. After that meeting, you understood the meeting was to take place at 2 o'clock on April 22nd?

A. That is right.

Q. How long after 2 o'clock, on April 22nd, was it before the picket line hit your hotel?

A. Exactly 3 o'clock on April 22nd.

[fol. 290] Mr. Sibley: At this time, we would like to tender in evidence the transcript of the conversations that occurred between Mr. Herman and myself, which were reported by the present Court Reporter, Mr. Edward Schwartz.

We ask that it be marked in evidence as Plaintiff's Exhibit No. 10.

Judge Carroll: Reported where?

Mr. Sibley: Taken at my office, at which time the Court Reporter was present and took the conversations between Mr. Herman and myself.

Judge Carroll: Do I understand there was a conference, say, at which the Reporter was present and both parties to the conference, and realized it was being taken down?

Mr. Sibley: That is explained, sir, by the report, itself.

Judge Carroll: Is there any objection to that?

Mr. Brown: No objection.

(The document just referred to was thereupon marked Plaintiff's Exhibit No. 10.)

Judge Carroll: Mr. Sibley, how long is this conversation?

Mr. Sibley: It consists of six or seven pages, I guess—[fol. 291] five and one-half pages.

Judge Carroll: Let me see it after you mark it.

By Mr. Sibley:

Q. At three o'clock, did you attempt to stop your employees walking out of the hotel?

A. Yes; I did.

Q. That is at three o'clock on April 22nd?

A. That is right.

Q. What did you do?

A. I asked the employees as they—somebody ran into the hotel and yelled, "The pickets are here—get off the job," and this is just before the shift change, which is about four o'clock.

I tried to get them all into a room to have a meeting with them and explain to them that the Sea Isle hotel had offered to negotiate with the Union, and Mr. Sibley had just concluded a conference with Mr. Herman, offering to negotiate with the Union for the Sea Isle Hotel, because I had so instructed him to do, and that this attempt to take these people off of their jobs was not for their benefit, because the Sea Isle was willing and ready to negotiate with anybody that Mr. Herman could show us that he had the authority to represent.

My appeal to the employees was effective in some instances, and some of them that had reason and sat there [fol. 292] and listened to me and went back to their work.

Many of them said, "It is too late; you should have spoken to us before," and away they went.

Q. Now, the picket line that you say was thrown up, some of your employees were in that picket line?

A. That is correct.

Q. Has this picket line hurt your hotel?

A. It certainly has.

Q. Has Mr. Herman called you and asked you whether or not you would—whether you were being hurt by this picket line?

A. He called me and asked me how things were going, and I told him that they were going terrible—without kidding. I was being hurt very badly.

Q. At the first hearing here on Thursday afternoon, did you have several witnesses here to testify for the Sea Isle?

A. I had some witnesses here to testify for the Sea Isle; yes.

Q. In reference to violence?

A. In reference to intimidation and violence.

Mr. Gramling: I object to that question, asking him about—does he have some witnesses, and how are they going to testify. I move it be stricken.

[fol. 293] Mr. Sibley: I will produce the statements of the witnesses, and then I will show what happened to the witnesses.

Judge Carroll: The motion will be granted as to the witness' statement of what the witnesses who were here would have testified to.

Mr. Sibley: All right, sir.

Judge Carroll: It is left in as to his statement that there were some witnesses here from his hotel.

By Mr. Sibley:

Q. When you came back to the session last night, where were your witnesses?

A. There were three of them that disappeared and left their employment at the hotel, and they did not show up for work, and two of them refused to come back here.

Mr. Sibley: You may inquire.

Cross examination.

By Mr. Brown:

Q. Mr. Snider, what is your home address?

A. I am presently living at the Sea Isle Hotel and the rest of the year I live in Boston, Massachusetts.

Q. Where is your legal address?

A. 275 Freemont Street, Boston, Massachusetts.

Q. Do you use a leather suit case or a carpet type suit case?

A. I travel without baggage.

[fol. 294] Q. Who else has a substantial interest in the Sea Isle?

A. Mr. Stanley Weinberg.

Q. What is his residence?

A. Montreal.

Q. And who else?

A. That is all.

Q. Just you and Mr. Weinberg?

A. That is right.

Q. Is Mr. Weinberg in town?

A. No, sir; he is in Canada.

Q. You have full authority to negotiate for the Sea Isle?

A. I have full authority to negotiate for the Sea Isle.

Q. How long have you been the President and the General Manager of the Sea Isle?

A. Since the 10th day of December, 1954.

Q. Mr. Snider, as a matter of fact, this is not the first labor difficulty the Sea Isle has had in recent months, has it?

A. This is the only labor difficulty that I know that the Sea Isle has had—if this is a labor difficulty for the Sea Isle.

Q. Now, directing your attention to January of this year, [fol. 295] didn't the Sea Isle Hotel have a great deal of difficulty with its employees over the question of whether or not the Sea Isle could search each employee and search the locker of each employee; was there not a good deal of publicity and publicized difficulty at the Sea Isle on that issue?

A. There was no difficulty at the Sea Isle Hotel on that issue. If you will allow me to elaborate——

Q. Yes.

A. I will tell you more about the answer.

Q. Please do.

A. I operate other hotels in the United States that have Union contracts, and we have a form of employment application for the——

Mr. Sibley: I object to that, your Honor, upon the ground it is not in cross of——

Judge Carroll: I think it is outside the scope of the direct examination. We are not concerned with past employment practices and problems.

Mr. Brown: In January of this year, your Honor.

Judge Carroll: Or today, for that matter.

By Mr. Brown:

Q. Now, Mr. Snider, you say you have had considerable conversations with Mr. Herman, have you not?

[fol. 296] A. That is right.

Q. Have you at any time indicated to Mr. Herman that you are willing to negotiate with him?

A. Yes. I have always indicated to Mr. Herman that the Sea Isle Hotel has been willing to negotiate.

Q. And have you, in fact, negotiated?

A. I have not negotiated.

Q. Why not?

A. I have turned the matter of negotiation over to an attorney who represents me in regard to the negotiations.

Q. Well, has he negotiated with Mr. Herman?

A. I believe he has attempted to. He has told——

Q. Is that the transcript of the conference between Mr. Sibley and Mr. Herman—the negotiations that were attempted?

A. I know that my attorney told me—that I authorized him to negotiate for the Sea Isle, and he told me that he tried to negotiate for the Sea Isle.

Q. Was there any discussion between Mr. Herman of the wages, hours, working conditions?

A. I was not there.

Q. You do not know?

A. I do not know.

Q. And Mr. Sibley did not tell you?

[fol. 297] A. He told me some things; yes.

Q. What did he tell you?

A. He told me that he attempted to negotiate with Mr. Herman; that he told Mr. Herman that he represented the Sea Isle, and I had told Mr. Herman that Mr. Sibley had represented—was authorized to negotiate for the Sea Isle, and he asked Mr. Sibley—he asked Mr. Herman who he represented, and asked Mr. Herman to tell him who he had the right to negotiate for, and if he showed him or told him who he had the right to negotiate for, he was prepared to negotiate with him for the people who he represented.

Q. Then what happened?

A. Then Mr. Herman refused to give him that information and the meeting broke up.

Q. Was it your position, then, that the Sea Isle does not negotiate with the Union involved here because you do not know the people that the Union represents?

A. That is correct.

Q. Didn't you tell us, yourself, that you were present when the work stoppage occurred and the people walked out?

A. That is right.

Q. And you knew they belonged to the Union?

A. I do not, and I did not. Most of the people walked out because they were afraid to stay—not—the expression [fol. 298] of the people who walked out, in most instances, was that they were walking because they were afraid to stay; not because they wanted to walk.

Q. Now, you described, on direct examination, your conversation with a number of people, in which you implored them to stay in the hotel: there were no pickets present at that time in the hotel?

A. There were pickets outside of the hotel at the time I talked to these people.

Q. Now, get back to my question. Were there any pickets inside the hotel while you were talking to your employees?

A. No.

Q. You were the only representative of management, and there was no representative of the Union present, was there?

A. There were many people who were employees at that time of the Sea Isle Hotel.

Q. Let us get back to the question. When you were talking to your employees, Mr. Herman was not present and no pickets were present?

A. That is right.

Q. You were there alone in this conversation?

A. I was not alone. I had a lot of people.

[fol. 299] Q. Your own people?

A. And people who were working at the Sea Isle.

Q. But this all took place inside the hotel?

A. That is right.

Q. And there was nobody from the Union standing over there with a club to boss these people to come out of the hotel, was there?

A. There were people from the Union.

Q. Please answer the question.

A. Union members exhorting these people to leave their jobs. They ran through the hotel up on the floor, shouting, "The pickets are here—leave your jobs."

Q. That is right. Now, we will get back to the question. At the time you were talking to the people, there was not anybody around there, excepting a representative of management and the employees, isn't that right?

A. That is correct.

Q. Thank you. We covered that point. And you said to these people, "Stay in the hotel," did you not?

A. I said to these people, "Do not leave your jobs; this is not a strike."

Q. And you also said, you were willing to negotiate, did you not?

A. I have always said that I am willing to negotiate.

[fol. 300] Q. And then some of the employees said, "You should have spoken to us before; you should have negotiated before"; didn't they? A. No.

Q. Isn't that what you said?

A. Wait a minute. The employees said I should have spoken to them before, and explained the fact that they had the right to work; that nobody was forced to leave a job because of a Union dispute.

Q. You told them then?

A. I certainly did, and many of them said——

Q. And those who did not stay, you think they could have been Union members, perhaps?

A. They may or may not have been. I believe many people walked out of the Sea Isle who were not Union members, or who had not signified their intention to become Union members and stayed there.

Q. Well, it all boils down to this: You did not negotiate with the Union right now because you have a doubt as to whether the Union represents the majority of the employees?

A. That is correct.

Q. Are you willing to submit that issue to an Impartial Master appointed by this Court?

[fol. 301] Mr. Sibley: I object to that, upon the ground it calls for a——

Judge Carroll: Objection sustained.

By Mr. Brown:

Q. Are you willing to submit this issue to anybody?

Mr. Sibley: I object to that.

Judge Carroll: Sustained.

By Mr. Brown:

Q. What efforts, if any, has your hotel made to determine whether your employees belong to the Union and are willing to be represented by this Union?

A. At the present time, it is impossible to make any efforts. We have a tremendous transient problem with help and the help comes in to work and the next day or two days later they do not show up, and you look for them and they say that they are afraid to come to work. There is no way of determining what their interest is.

Mr. Brown: I move that the answer be stricken as unresponsive to the question.

Judge Carroll: Granted.

By Mr. Brown:

Q. Now, Mr. Snider, as a matter of fact, didn't you take —didn't you go through the hotel and ask your employees whether or not they belonged to the Union?

A. I did not go through the hotel and ask them whether [fol. 302] they belong to the Union.

Q. By means of a written ballot?

A. I did not go through the hotel by means of a written ballot to ask them whether they were members of the Union.

Q. What did you do in that regard with a written ballot?

A. We had a piece of paper circulated individually to each employee that said, "I do want the hotel union so and so", or, "Hotel Restaurant and Employees Union to have the right to negotiate for me," or, "I do not want",—and we said to the employees, we would like a free expression from you as to whether or not you want to be represented by this Union, and we said, "You may sign this one way or the other, or you may have the right not to sign it," and you have a free choice.

Q. Did you or do you have those ballots yet, sir?

A. I have some of them, yes. I have all that are signed.

Q. What about the ones that were not signed?

A. I have them, too.

Q. Are they in Court here?

A. No.

Q. How did the vote come out—signed and unsigned— [fol. 303] the total?

A. About 80 per cent of them did not want the hotel—the Union to negotiate for them.

Q. And how many ballots; what was the total of the ballots?

A. I think we had—there were about 60 or 70 people who signed these papers. They were not ballots. They were just an expression of their wish.

Q. I just referred to them as ballots.

A. I cannot refer to them as ballots, because they were not. They were just an expression on their part.

Q. 60 or 70 signed them?

A. That is right.

Q. And what was the vote on the 60 or 70?

A. I do not know the exact figure. I'd say about 80 per cent of them did not want the Union to represent them.

Q. On the unsigned ballots, what was the vote there?

A. There were some that wrote, "No comment," and some wrote, they wanted the Union to represent them, and some said, "No comment."

Q. Will you give the approximate percentage of those [fol. 304] which were unsigned?

A. The unsigned—of the unsigned, there were 85 per cent of the people would have, "No comment." We did not go to everybody in the hotel. They were not there. But we went to as many as we could get that would sign. I have every single one of them, and they are available if the attorneys want them to be there.

Q. How many ballots were passed out in all?

A. They were not passed out. They were given to individual people for an expression of their position.

Q. How many ballots were given to the individual people for an expression of their opinion?

A. I only know how many we got back.

Q. How many did you get back?

A. I told you, around 60 or 70.

Q. Signed and unsigned?

A. That is right.

Q. How many employees are there in the Sea Isle?

A. There were, up to about 180.

Q. So, out of 180 employees, you only got back 60 ballots, signed and unsigned?

A. That is right. But it was a cross-section of the employees that we had working.

Q. And about 85 per cent of them all said, "No comment." [fol. 305] A. No. I said, 80 per cent of those that we have did not want the Union to represent them.

Judge Carroll: I think one of your answers was a little confusing. He asked you how many were handed back without being signed.

The Witness: Of those that I have back, only about 5 per cent or less had no signature on them. They just said, "No comment."

By Mr. Brown:

Q. You only got about 60 ballots in all back, including those signed?

A. We got no ballots back. We just asked these people——

Q. Let us not bandy words.

A. You are.

Q. Pieces of paper?

A. That is better.

Q. You got about 60 pieces of paper back in all, signed and unsigned?

A. That is right.

Q. Out of 180 that were passed out?

A. There were not 180 passed out. I said that there were 180 employees. We did not pass them out to every employee. They are not on the shift at the same time.

[fol. 306] Q. Mr. Snider, did you have an appointment with Mr. Ed Miller, the General President of the hotel and restaurant employees in January?

A. I did not have an appointment with Mr. Ed Miller.

Q. Did your attorney have such an appointment?

A. My attorney did not have an appointment with Mr. Ed Miller.

Q. Who did you meet with, in January?

A. I did not arrange a meeting with anybody.

Q. I did not ask you about "arrange". You like to be real technical.

A. I am.

Q. So be real technical about the truth and tell us who you met with?

A. I am technical about the truth.

Q. Answer the question, then.

A. I met with nobody except a Mr. Al Berlin and a Mr. Smith came to the Sea Isle Hotel one day, and asked to see me, and at that time I did not know Mr. Al Berlin and who Mr. Smith were.

Q. What occurred?

A. They came into my office, and I said, "Good morning, gentlemen, who are you?"

Q. You do not call that having a meeting with anybody?

[fol. 307] A. They did not request an appointment. They just walked in.

Q. That was not a meeting. Tell us what happened at this thing.

Judge Carroll: May I suggest, Mr. Brown, that you not quibble and argue with the witness. Just ask him for in-

formation. He may know it, and let us have him get on with this thing.

Mr. Brown: Yes, sir.

By Mr. Brown:

Q. Tell us what happened.

A. They came to my office and said that they wanted to negotiate for the employees of the hotel, with a union, and I told them—I told them that I was not in a position at that time to negotiated with them, and I had just come to town and they would have to—that I was not opposed to talking to them, but that would have to remain for a later date.

He wanted to know if I would be willing to see Mr. Ed Miller there, and I said that I had no objection to seeing Mr. Ed Miller, and I have been commuting back and forth to Boston and I said, and I said some other time, and I said if Mr. Ed Miller wanted to see me I was available, and we talked socially for a half an hour, and that was the end of the conversation.

Q. Were there any other meetings?

[fol. 308] A. No, sir.

Q. You had some meetings with Mr. Herman?

A. Yes, sir.

Q. And you are willing to negotiate with the union if it can establish that it has a majority?

A. I have always been willing to negotiate with the union, At no time have I refused to negotiate with the union, and that is my—and it is signed—those signs that walk in front of my hotel do not represent the truth.

Q. Did you see the ad that was placed in the newspaper by the union just three days ago?

A. Yes, sir.

Q. You saw that ad that the union was willing to remove the pickets if you would negotiate with the union.

Mr. Sibley: I object to that on the grounds it is not in cross on anything that was brought out on direct examination.

Judge Carroll: Sustained.

By Mr. Brown:

Q. Do you live in the hotel, sir?
A. Yes.
Q. You come and go each day?
A. Sometimes I come and go, but I live in the hotel.
Q. You have observed the picketing at the Sea Isle?
A. I have.
Q. Is it violent?
[fol. 309] A. It is not violent.

Mr. Brown: That is all.

Redirect examination.

By Mr. Sibley:

Q. I just have two questions. One is—you had informed me of the results of this cross section of sampling that you had taken of your employees prior to the time that I met with Mr. Herman; is that right?
A. That is right.
Q. Have you received any threats, yourself?
A. I have received a threat from a former employee of the Sea Isle, that if he does not get his job back, he will kill me.

Mr. Warren: Your Honor, we move to trike that on the ground that that does not relate to picketing, wages, or any of the matters in controversy. That is an individual, personal threat from that man directly against Mr. Snider, which we regret and deplore. I do not believe you can hang it on the union and the pickets.

By Mr. Sibley:

Q. Did he say anything about the strike?
A. Yes. He said, "Mr. Snider, if I do not get my job back, I will have to kill you. Please settle the strike."
Q. What did you do about that?
[fol. 310] A. I called up the FBI, and they have the letter, and the envelope is in their possession.

Mr. Brown: Your Honor, I move to strike the question and answer on redirect examination because they have gone

beyond what was brought out on cross examination. I think that is contrary to the rules of practice in this jurisdiction.

Judge Carroll: The motion is denied. The witness is considered recalled.

Mr. Sibley: You may inquire.

Mr. Brown: No further examination.

Mr. Sibley: Come down.

(Witness excused.)

Thereupon—RICHARD DOLAN was called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your name.

A. Richard J. Dolan.

Q. Where do you reside?

A. Biscayne Park.

Q. What is your position?

A. General Manager of the Roney-Plaza Hotel.

Q. On or about April 13th or 14th, did you receive a [fol. 311] telegram at the hotel addressed to Mr. Meyer Schine from Mr. Herman?

A. At approximately 9:30 that morning, I was advised by one of our front office people that a telegram had been received addressed to Mr. Schine.

Q. Mr. Dolan, did you speak to Mr. Schine during that day in reference to the telegram?

A. Mr. Schine was leaving for New York, with a stopover in Washington, on a 9:00 o'clock flight out of Palm Beach that morning, and I did not know where he was stopping in Washington and I left a call at the Mayflower, a Statler hotel, that in case he stopped off, to contact me.

I did not hear from him until approximately 7:00 o'clock that night, at which time I advised him of the contents of the telegram.

Q. Did you receive any instructions in reference to it?

A. Mr. Schine advised me to turn the matter over to Mr. Sibley.

Q. Now, is the communication which you turned—the wire in which you turned the telegram over to me pursuant to Mr. Schine's direction?

A. That is.

Q. Will you refresh your recollection from it and tell me what day the matter was turned over to me?

[fol. 312] A. The matter was turned over to you on April 13, on Wednesday.

Q. That is the date you mailed out your communication to me?

A. That is correct.

Q. Is this a copy of the telegram that came to Mr. Schine?

A. That is a facsimile copy, yes.

Mr. Sibley: We tender in evidence the telegram identified by the witness, and ask that it be marked in evidence as Plaintiff's Exhibit No. 11.

Mr. Brown: I object.

Mr. Sibley: If he objects, I will withdraw it.

Judge Crawford: What is the ground for the objection?

Mr. Brown: The ground for the objection is, it seems to be a self-serving declaration. Pardon me. I would like to read it. We withdraw our objection. I thought this was another document. I think it is one by Mr. Herman. I thought it was his telegram to Mr. Schine.

The Witness: I did not send a telegram to Mr. Schine.

(The document referred to was thereupon marked Plaintiff's Exhibit No. 11, the telegram.)

[fol. 313] By Mr. Sibley:

Q. Did you on the 14th—when was the picket line at your hotel thrown up?

A. At 6:00 o'clock on the morning of the 15th.

Q. Did you on the morning of the 14th, receive a telephone, or have a telephone conversation, with Mr. Herman—a telephone communication?

A. I was contacted by Mr. Meyer Levy, who was a captain for No. 133 and advised that Mr. Herman wanted to speak to me. I called Mr. Herman on——

Q. What day was that?

A. That was a Thursday, the 14th. I called Mr. Herman on your——

Q. Go ahead. You called him on my——

A. I called Mr. Herman to tell him that you were to represent us in all labor negotiations. We mis-connected on a couple of calls, and finally he called me at 5:30 that afternoon, at which time I advised him on the phone that you were to represent our interests in any negotiations.

Q. Did you see Mr. Herman again that evening?

A. At approximately 11:00 o'clock that night I received a call from the front desk that Mr. Herman was in the lobby to see me. I went down to the lobby to talk to Mr. Herman and see what he had in mind.

He was there, accompanied by four of his fellow union men and he seemed to be trying to determine if Mr. Schine [fol. 314] had received the telegram, and what our action was going to be.

I again referred him to our conversation of that afternoon, that I was not empowered to negotiate and that you were the man that he should see.

Q. When you say, "You", you are speaking of——

A. I am speaking of Mr. Sibley, at 605 Lincoln Road.

Q. Now, that was at 11:00 o'clock at night on the 14th?

A. That is correct.

Q. When did the pickets picket your hotel?

A. At about five minutes of 6:00 the following morning.

Q. Is this a photograph of the signs being carried by the pickets, are these photographs of the pickets at your hotel?

A. That is a photograph; yes.

Q. And does the sign, carried by the pickets at your hotel——

A. This is the sign they have been carrying.

Q. Do you recognize either of those as former employees?

A. No.

Mr. Sibley: We tender in evidence the photograph iden- [fol. 315] tified by the witness, and ask that it be marked in evidence as Plaintiff's Exhibit No. 12.

Mr. Brown: No objection.

(Thereupon, the photograph referred to was marked Plaintiff's Exhibit No. 12.)

By Mr. Sibley:

Q. What has been the effect of this picket line at your hotel?

A. The picket line has resulted in a very severe disruption of normal operation and business. We were forced to close down our cabana restaurant for approximately three days and since we have been operating with a limited menu, with approximately twenty percent of the items that were formerly offered.

We closed down our Bamboo Room for approximately forty-eight hours, the first time the room has been closed since the hotel has been open on a year around basis.

Since that time we have been operating with a limited staff, and have not realized normal business, which we normally do in that room.

Our dining room has been operating with a limited staff, and again we have been affected in our business operation.

We lost a convention group which was scheduled for approximately two weeks, I believe it was, in early June or July, and we were also forced to cancel out a couple of [fol. 316] parties that were scheduled in the hotel.

We have no way of determining just what results the picketing in other cities has resulted in our business, but reservations and requests for reservations have not been up to normal.

Q. Now, you say picketing in other cities. What do you mean by that?

A. By that I mean that the picket line has been established in front of our office in New York City at 445 Park Avenue, stating that the hotel is on strike.

Q. Do you know whether or not this is a picture of the picket line in front of your office in New York or not?

A. This is the picket in front of the office at 445 Park Avenue.

Q. You recognize the location?

A. Yes, sir.

Mr. Sibley: We again tender in evidence the picture identified by the witness, and ask that it be marked in evidence as Plaintiff's Exhibit No. 13.

Mr. Brown: We renew our objections. We made an earlier objection to this, as being outside the jurisdiction of this State.

Judge Carroll: Objection overruled. It will be filed in evidence.

Are there two pictures?

[fol. 317] Mr. Sibley: Two pictures, I believe——

Judge Carroll: You are offering them both?

Mr. Sibley: I am offering all of them.

Judge Carroll: Is there any distinction between them as to the objection.

Mr. Brown: I have not seen the others, yet.

Judge Carroll: Well, on the back there is the affidavit of somebody.

Mr. Brown: May we see them, Mr. Sibley, or are they to be held a secret from us?

Mr. Sibley: After I get through.

Judge Carroll: Patience, Mr. Brown.

Mr. Sibley: Let me get through. You get so excited. In this offer I was trying—you think I was trying to sneak in something.

Mr. Brown: I would never suggest that, Mr. Sibley. You have a reputation in this community which is outstanding and I never insinuated such a thing.

Judge Carroll: Let us see what you are marking, Mr. Clerk.

Mr. Brown: Your Honor, I would like to enlarge on the objection. Since the pictures show that the picketing is by Local No. 6 of New York, and not by this local at all, [fol. 318] this is apparently another union entirely.

Judge Carroll: The ruling has been made.

(The three photographs just referred to were thereupon marked Plaintiff's Exhibits Nos. 13-A, 13-B, and 13-C, respectively.)

Mr. Sibley: You may inquire.

Cross examination.

By Mr. Brown:

Q. Mr. Dolan, do you know whether or not there have been any negotiations between the representatives of the Roney-Plaza Hotel and Mr. Herman, or any other representative of the union?

A. To the best of my knowledge, there has not been.

Q. Do you know whether there were any negotiations with a representative of the Schine union?

A. To the best of my knowledge, there has not been.

Q. Do you know whether there were any negotiations with a representative of the Schine Enterprises, or the owning company of the Roney-Plaza in Los Angeles with reference to the Roney-Plaza?

Mr. Sibley: I object to that on the ground it is immaterial and irrelevant and not in cross of anything that was brought out on direct examination.

Mr. Brown: I said that is the locale of the negotiations with reference to the Roney-Plaza.

[fol. 319] Mr. Sibley: Between the defendant and No. 255; is that the question?

Mr. Brown: Between the union, yes, No. 255 and the Roney-Plaza.

Mr. Sibley: I withdraw my objection.

The Witness: I have no knowledge of any negotiations.

By Mr. Brown:

Q. Did you ever hear of that?

A. No, sir.

Q. Mr. Dolan, what are your duties?

A. General Manager.

Q. As such, do you handle personnel problems at the hotel?

A. At the present time, we have a personnel manager.

Q. And he works under you?

A. That is correct.

Q. Now, Mr. Dolan, have you observed the picketing in front of the Roney-Plaza?

A. I certainly have.

Q. Has it been violent?

A. It has not been violent, but it has been of an intimidating vein.

Q. Just describe what you have seen?

A. I have seen men with pads jotting down license num-
[fol. 320] bers, and I have seen men with——

Q. Do you know who those men are?

A. They are picket captains. I can identify them, yes. They are picket captains.

Q. Describe the picketing itself. Is it being done—are the men walking up and down in front of the hotel?

A. The men are walking up and down in front of the hotel; yes.

Q. Are they molesting patrons who enter the hotel? By the way, where are they walking?

A. They are walking on Collins Avenue.

Q. They are walking out in the street?

A. That is right.

Q. Which is not in front of the hotel at all, is it?

A. No.

Q. The entrance is off the sidewalk?

A. We had the pickets removed from the entrance there.

Q. So, they are not even picketing at the entrance right now?

A. They cannot picket the entrance.

Q. I asked you whether they are or not?

A. They are not.

[fol. 321] Mr. Brown: That is all.

Redirect examination.

By Mr. Sibley:

Q. They were picketing your entrance when they first threw up the picket line?

A. They were picketing the entrance.

Q. And an injunction was granted by Judge Cannon against them?

A. That is right.

Q. In front of your hotel it is private property; is it not?

A. The front of the hotel is private property, and I had so advised Mr. Smith at 6 p.m., or rather, 6 o'clock on the morning of the 15th when he threw up the picket line.

Mr. Smith informed me that regardless of the fact that it was private property, he still intended to put his pickets there.

Q. Did he put them there?

A. He put them there; yes.

Q. You say there was a vein of intimidation, and in the middle of the answer you were interrupted. You said you saw picket captains taking down the names of people who came to the hotel, and what else did you observe in that?

A. I had seen them jotting down the license numbers, and we have had them in our parking lot taking license [fol. 322] numbers off employees' cars, and we have had to house—keep the people in the hotel, because of this practice by the Union.

Mr. Brown: I object to that as being unresponsive to the question, and totally unconcerned with what he saw on the picket line—housing them in the hotel.

Judge Carroll: Overruled.

By Mr. Sibley:

Q. Did you see them taking pictures or photographs?

Mr. Brown: Objection as leading.

Judge Carroll: Sustained.

Mr. Sibley: I withdraw the photograph part.

The Witness: We have been forced to——

Judge Carroll: Just a minute. There is no question pending.

By Mr. Sibley:

Q. Now, at the present time, do you house any of your employees?

A. At the present time we are housing approximately 35 employees.

Q. Did you do that prior to the picket line being put up?

A. It has not been our practice.

Mr. Sibley: That is all.
Judge Floyd: Do you have any recross examination?
[fol. 323] Mr. Brown: No recross examination, sir.
Mr. Sibley: Come down.

(Witness excused.)

Mr. Sibley: Mr. Lansburgh.

Thereupon—MORRIS LANSBURGH was called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your name.
A. Morris Lansburgh.

Judge Carroll: Are there other witnesses?
Mr. Sibley: One more witness. I am going back to the Monte Carlo to pick up the owner, in view of the cross-examination of Mr. McIntyre, and that is all.
Judge Carroll: Go ahead.

By Mr. Sibley:

Q. What hotels are you connected with?
A. I am connected with the Sherry Frontenac and the Sans Souci.
Q. When was the picket line thrown up at the Sherry Frontenac?
[fol. 324] A. On April 16th, at 4 p.m.
Q. When was it thrown up at the Sans Souci?
A. I understand at 6 a.m., on April 17th.
Q. When did you see it there?
A. About 7 o'clock on April 17th.
Q. Is this a picture of the picket in front of your hotel, which one is that of?
A. That is in front of the Sans Souci.
Q. And that is a true picture of the picket line?
A. That is right.

Q. At times?
A. It is, sir.

Mr. Sibley: We offer in evidence this picture which was identified by the witness, and ask that it be marked Plaintiff's Exhibit No. 14.

Mr. Brown: What is the time and the date given on this picture, sir?

Mr. Sibley: Do you recall, as well as you can, the day that picture was made?

The Witness: Approximately——

By Mr. Sibley:

Q. Go ahead.
A. Approximately April 20th, during the afternoon.

Mr. Brown: What time in the afternoon?

The Witness: To my best recollection, between the hours [fol. 325] of 11:30 and 2 and 3.

Mr. Brown: No objection.

Judge Carroll: Mark it.

(The picture referred to was thereupon marked Plaintiff's exhibit No. 14.)

By Mr. Sibley:

Q. I believe you said that this picture was taken in front of the Sans Souci?
A. That is right.
Q. Is this a picture of the pickets in front of one of your hotels?
A. Yes, sir. This is the picture of the pickets in front of the Sherry Frontenac.
Q. Do you recall approximately when that picture was taken?
A. This picture was made the day after the strike—April 17th.
Q. Do you recall what time?
A. In the morning, sir.
Q. And that is a picture in front of the—in front of the Sherry Frontenac Hotel?
A. Yes.

Mr. Sibley: We tender in evidence a picture identified by the witness, and ask that it be marked Plaintiff's Exhibit No. 15.

Mr. Brown: No objection.

[fol. 326] (The picture just referred to was thereupon marked Plaintiff's Exhibit No. 15.)

Judge Floyd: What is your capacity?

The Witness: I am one of the joint-venturers—one of the partners in the lease of the Sherry Frontenac, and the Secretary of the Corporation that owns the Sans Souci.

By Mr. Sibley:

Q. Mr. Lansburgh, did you receive a communication from Mr. Herman before the picket line was thrown up at the Sherry Frontenac?

A. Yes, I did, sir.

Q. What time of day did you receive that communication, and what type of communication was it?

A. On April 16th, 1955, Mr. Herman telephoned me and told me that he would like to negotiate with us. I told him that it was Saturday afternoon, rather late, and I would be willing and very glad to call one of my partners, who happened to be in Chicago at that time, at our reservation office.

Q. Who is your partner in Chicago?

A. He was in Chicago—Dr. Robert S. Levy.

Q. All right; go ahead.

A. And I would call Mr. Herman back. Mr. Herman said, "Do you think I am going to wait around while you get instructions?" He said, "You call me back before 3:45."

[fol. 327] Q. What time did he call you?

A. He called me at 3:30.

Q. All right, go ahead.

A. He said, "Call me back before 3:45," and I said, "Well, you are not giving me much time on a Saturday afternoon. You try my partner in 15 minutes, in Chicago," and I gave him his telephone number, "State 2-3084," and Mr. Herman said, "No; you go ahead. I have a meeting at 3:45, and be sure you call me back by then."

Q. This is 3:30?

A. This was at 3:30.

Q. Go ahead.

A. I tried to contact Dr. Levy in Chicago, and I was not successful. They do not work on Saturday afternoons. And at 10 minutes of 4, I was called from the Sherry Frontenac that there were pickets in front of the hotel.

Q. Did you go to the Sherry Frontenac?

A. I did, sir.

Q. Were there pickets in front of the hotel?

A. There were pickets in front of the hotel, and there were two organizers whom I knew who they were, across the street on our parking lot, screaming to the employees who were due to come in at 4 o'clock, "Do not go in there or we will break your heads."

Q. Where were they located, these two organizers that [fol. 328] were screaming?

A. On my parking lot, across the street.

Q. Do you know the name of one of them?

A. One man's name is Mischel.

Q. He is one of the defendants in this case, Henry Mischel?

A. Yes, sir.

Q. And did you go over to speak to Mr. Mischel?

A. I certainly did.

Q. He was on your parking lot?

A. That is right.

Q. What was he screaming to your shift when they were coming in?

A. As the people were getting off the bus, right in front—right next to the parking lot, he was screaming to them, "Do not go to work. We will crack your skulls if you go in there."

I went over to Mr. Mischel with my manager, and I told him to stop inciting a riot, and to get off my parking lot, and he told me, if I was big enough, to make him; to go ahead.

We had a bit of an argument and I told him to get off and he said he would not, and finally an officer came over and the officer told him that it was private property; that he would have to get off, and he said—he still said he would [fol. 329] not.

So then the officer said to me, "Should I arrest him," and I said, "I am not particularly anxious to have him arrested. Just tell him to get off this parking lot."

Again, the officer told him to get off and he refused, and so the officer had no alternative but to take him away and arrest him.

Q. That was Mr. Mischel?

A. That was Mr. Mischel, and the rest of them left immediately thereafter.

Q. Now, has the picket line injured your hotel?

A. It certainly has.

Mr. Brown: I object. It is a conclusion.

Judge Carroll: Overruled.

By Mr. Sibley:

Q. What has been the effect?

A. We have closed our main dining room in one hotel, and our bar sales are off very much. The employees are afraid to come to work.

Mr. Brown: I object, to that, your Honor. There is no testimony to that effect.

The Witness: There has been——

Judge Carroll: Just a moment. The conclusion just stated is stricken.

By Mr. Sibley:

Q. Go Ahead.

A. The employees are afraid to come——

Q. The Court struck that out.

A. There have been fights in front of our hotel.

[fol. 330] Mr. Brown: I object to that. There is no testimony to that effect.

Mr. Sibley: Oh, yes; a lot of it.

Judge Carroll: Let the witness answer. If counsel finds something objectionable you may move to strike it, but hold your motions until the witness' answers are completed. You throw him off and disconcert him, and the Court loses the benefit of his possible testimony.

The Witness: There has been cancellations of reservations. We had one group cancel out completely that was to arrive on May 1. In fact, it was a 67-room group, and our sales are off, very much.

Mr. Sibley: You may inquire.

Mr. Brown: I move to strike that part of his testimony in which he refers to a fight in front of the hotel, because he has given no testimony, himself, that he saw any fights in front of the hotel. He just made a blanket statement.

Judge Carroll: Granted.

(Witness excused.)

Thereupon—BENJAMIN G. KLINE was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

[fol. 331] Direct examination.

By Mr. Sibley:

Q. Please state your name.

A. Benjamin G. Kline.

Q. What is your occupation or your connection with the Monte Carlo?

A. I am president of the Monte Carlo Hotel.

Q. Have you ever received any communication from Mr. David Herman in reference to negotiations of any contract of any kind?

A. Never.

Q. Regarding labor conditions at the Monte Carlo Hotel?

A. Never.

Q. Have you got with you the only contact or communication you ever received from Mr. Herman?

A. Yes.

Q. Do you have it with you?

A. Yes.

Q. Will you produce it, please? Are you a director of The Miami Beach Hotel Association?

A. Yes, sir.

Mr. Sibley: We tender in evidence the communication identified by the witness as plaintiff's Exhibit No. 16.

Mr. Brown: No objection.

Judge Carroll: Received.

[fol. 332] Mr. Sibley: We ask that it be marked as Plaintiff's Exhibit No. 16 in evidence.

(The document referred was thereupon marked Plaintiff's Exhibit No. 16.)

Mr. Sibley: You may inquire.

Cross examination.

By Mr. Brown:

Q. After receiving this letter, did you make any attempt to contact Mr. Herman or any other representative of the union regarding the negotiations.

A. No, sir.

Mr. Brown: That is all.

Mr. Sibley: Come down.

(Witness excused.)

Thereupon—MURRAY FRIEDMAN, was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your full name.

A. Murray Friedman.

Q. What is your connection with the Sorrento Hotel?

A. Treasurer of the Sorrento Hotel.

[fol. 333] Q. Have you or member of management, so far as you know, received any communication from Mr. Herman seeking to negotiate a contract on behalf of your employees, concerning labor conditions?

A. No written communication.

Q. Have you had any telephone communications?
A. I believe my associate had a call from Mr. Herman.
Q. Who is that?
A. Mr. Resnick.
Q. You never had any?
A. No, I did not.

Mr. Sibley: You may inquire.
Mr. Brown: No cross examination.
Mr. Sibley: Come down.

(Witness excused.)

Thereupon—BERNARD RESNICK, was called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sibley:

Q. Please state your name.
A. Bernard Resnick.
Q. What is your connection with the Sorrento Hotel? [fol. 334] A. I am vice president and secretary of the Sorrento Hotel Corporation.
Q. Did you have a telephone conversation with Mr. David Herman in reference to seeking to negotiate on behalf of the employees by him?
A. I had a phone call from Mr. Herman in which he stated that he represented the employees of the Sorrento Hotel, and I, in turn, told him to feel free to call Mr. Sibley, our attorney, and discuss it with him.
He mentioned that he has his own attorneys, and we requested him to call our attorney, and I repeated that he should feel free to call him, and that was the end of the conversation.
Q. You told him that I had been authorized to negotiate on behalf of your hotel?
A. I did, sir.

Mr. Sibley: That is all.

Cross examination.

By Mr. Brown:

Q. Does your company employ an attorney named Solomon in New York City?

A. No, sir.

Q. Is there such an attorney representing your company in any way, in New York, by that name?

A. Absolutely not.

Q. Are there other officers of your company?

[fol. 335] A. Yes.

Q. Who are they?

A. Mr. Seymour Dressner.

Q. Where is he?

A. He is a resident of Miami Beach, and associated with the hotel.

Q. Who else?

A. Mr. Murray Friendman.

Q. And who else?

A. Myself, and a Murray Druce.

Q. Where is he located?

A. In New York, sir.

Q. Do you know Mr. Solomon, the attorney in New York?

A. I, personally, do not know of Mr. Solomon.

Q. Do you know of him?

A. No.

Mr. Brown: I cannot establish that he does not know——

Judge Floyd: There may be 25,000 attorneys named Solomon in New York.

Judge Carroll: Are you through?

Mr. Brown: That is all.

Re-direct examination.

By Mr. Sibley:

Q. There was a picket line thrown up in front of your hotel?

[fol. 336] A. Yes, there was.

Q. What effect has that had on your hotel causing a loss?

A. It has affected every phase of the hotel operation—the dining room, bar, and the rooms, and the actual operation, and the laundry room and kitchen and every phase of the hotel.

Q. Is it crippled?

A. It did cripple us on the opening day of the walk-out; yes, sir.

Q. You are not back to normal now, are you?

A. Absolutely not.

Mr. Sibley: That is all.

Mr. Brown: No further cross examination.

Mr. Sibley: Come down.

(Witness excused.)

PLAINTIFF RESTS

Mr. Sibley: Plaintiff rests, your Honor.

Judge Carroll: We will have a recess for about ten minutes.

(Thereupon a ten minute recess was taken, after which the following proceedings were had:)

(At this point, counsel thereupon argued to the Court.)

SUPREME COURT, U.S.

FILED

AUG 12 1957

JOHN T. FEY, Clerk

No. 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al., *Petitioners*

v.

SAX ENTERPRISES, INC.

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al., *Petitioners*

v.

LEEVLANS CORPORATION

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al., *Petitioners*

v.

R. S. LEVY, DANIEL LIFTER and J. S. LANSBURGH, as Trustee, etc., et al.

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al., *Petitioners*

v.

THOMAS JEFFERSON, INC.

PETITION FOR A WRIT OR WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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1505 Fountain Square Building
Cincinnati 2, Ohio

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Section 9 4

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. §151, *et seq.*)
Section 7 4
Section 9(c) 14
Section 10(a) 4

28 U.S.C. §1257(3) 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No.

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al., *Petitioners*

v.

SAX ENTERPRISES, INC.

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al., *Petitioners*

v.

LEEVLANS CORPORATION

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al., *Petitioners*

v.

R. S. LEVY, DANIEL LIFTER and J. S. LANSBURGH, as Trustee, etc., et al.

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al., *Petitioners*

v.

THOMAS JEFFERSON, INC.

PETITION FOR A WRIT OR WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Hotel Employees Union, Local No. 255 (and David Herman, Clarence L. Smith, Albert H. Berlin, Henry K. Mischel, individually and as officers and agents of said Local) pray that a writ or writs of certiorari issue to review the judgments of the Supreme Court of Florida entered in the above entitled cases on March 15, 1957.

OPINIONS BELOW

The opinions of the Circuit Court for Dade County in these cases are unreported. They are reprinted in the appendix hereto. The first opinion of the Supreme Court of

Florida (entered in *Sax Enterprises* v. *Hotel Employees*) is reported in 80 So. 2d 602 (1955); the second opinion of the Supreme Court of Florida (entered in a group of cases headed by *Boca Raton Club Inc.* v. *Hotel Employees Union*) is reported in 83 So. 2d 11 (1955); the third opinion of the Supreme Court of Florida (entered in *Thomas Jefferson, Inc.* v. *Hotel Employees*) is reported in 84 So. 2d 583 (1956); the fourth opinion of the Supreme Court of Florida (entered in *Fontainebleau Hotel Corp.* v. *Hotel Employees Union*) is reported in 92 So. 2d 415 (1957); the final opinions of the Supreme Court of Florida in all of the four cases as to which certiorari is here sought were identical *per curiam* affirmances on the authority of the *Fontainebleau* case and are reported in 93 So. 2d 583-600. All of these opinions are reprinted in the appendix hereto.

JURISDICTION

The judgments of the Supreme Court of Florida in each of these cases were entered on March 15, 1957. On June 11, 1957, Mr. Justice Black ordered that the time for filing "petition or petitions for writ or writs of certiorari" be extended to and including August 12, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Whether the Supreme Court of Florida may, consistently with the Fourteenth Amendment as it has been applied by this Court to the prohibition of peaceful picketing, embark upon a course of decision plainly designed to prevent any picketing under any circumstances by employees engaged in an attempt to achieve union recognition and collective bargaining in the hotel industry.

2. Whether a state court may, consistently with the 14th Amendment, prohibit any publication whatsoever of the fact that a strike exists.

3. Whether Florida may, either by judicial action or by

application of its statutory law, prohibit peaceful picketing and thus regulate labor relations matters in an industry affecting commerce over which the National Labor Relations Board has refused to exercise jurisdiction.

4. Whether Florida may, under such circumstances, prohibit concerted action which is protected by Section 7 of the National Labor Relations Act.

5. Whether the Supreme Court of Florida, by repeatedly changing the rules governing peaceful picketing during the course of the litigation, deprived petitioners of due process of law in violation of the 14th Amendment.

STATUTES INVOLVED

Laws of Florida, 1943, No. 334, Ch. 21968, Fla. Stat. (1955) §§447.01-447.15, provides in pertinent part as follows:

> Section 1. **Policy.** (1) Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or nonunionist, must be protected. The right to work is the right to live.
>
> (2) It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.
>
> Section 3. **Employee Rights.** Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Section 9. **Prohibited Acts.** It shall be unlawful for any person:

. . . . . .

(3) To participate in any strike, walk-out, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in subsection (3) of this section without a secret ballot.

. . . . . .

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in Section 3 of this Act, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.

The relevant portions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., 151, *et seq.*) provide as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .

* * * *

Prevention of Unfair Labor Practices

Sec. 10. (a) The Board is empowered as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that

has been or may be established by agreement, law or otherwise. *Provided,* That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

INTRODUCTORY STATEMENT

On March 15, 1957, the Supreme Court of Florida issued 22 identical opinions affirming final injunctions against all forms of picketing by the Hotel Employees Union at 22 different Miami and Miami Beach hotels, as well as prohibiting any publication of the existence of a strike at the hotels. Each of these opinions consisted of a single sentence—affirming the injunction on the authority of the Florida court's prior opinion in *Fontainebleau Hotel Corp.* v. *Hotel Employees Union,* Fla. 92 So. 2d 415 (1957).

In 9 of these 22 cases, the underlying dispute between the employer and the Union has been settled by the negotiation of a collective bargaining agreement. Review is being sought in this Court with respect to 12 of the remaining cases. On June 11, 1957, Mr. Justice Black granted an application for extension of time in which to file a "petition or petitions" in each of these cases.

While all of the cases were briefed and argued together in the Florida Supreme Court as one case, and the final opinion of the Florida Supreme Court in each case was identical, it is believed by counsel that the presentation of all 12 cases in one petition for certiorari would be overly

complex and confusing.[1] There are 12 separate records; the findings of the trial courts are not identical in each case; in some of the cases there have been repeated reviews by the Florida Supreme Court of trial court actions on preliminary injunctions. In an effort to present the issues here to the Court in the least confusing manner, counsel for petitioners have combined, in this one petition, 4 of the 12 cases, pursuant to Rule 23(5). These four, we believe, contain the significant opinions of the Florida Supreme Court (which spoke four times on the questions presented), adequately show the sequence and history of the litigation, and present the issues sought to be reviewed here in all of the 12 cases. In separate petitions which are being filed covering the other 8 cases, we shall rely on the factual framework and the reasons for granting the writ set forth in this petition, specifying what we believe to be the relevant differences, if any.[2]

For the sake of easy identification, and to minimize confusion, the four instant cases and their records will be referred to by the name of the hotel, or an abbreviation, as follows:

Name of Plaintiff	*Name of Hotel*	*Abbreviation*
Sax Enterprises, Inc.	Saxony	Sax
Leevlans Corp.	Sans Souci	Souci
R. S. Levy, Daniel Lifter, et al.	Versailles	Vers.
Thomas Jefferson, Inc.	San Marino	Marino

[1] We recognize that Rule 23(5) of the Rules of this Court seems to permit the filing of a single petition for certiorari covering all the cases.

[2] Counsel for petitioner sought to enter into a stipulation in the Supreme Court of Florida with counsel for the respondents in most of these cases, pursuant to which only the four cases covered in this petition would be presented to this Court, the other nine to abide the result therein. Counsel for these respondents agreed in principle but asked that two additional cases be presented to this Court. We agreed. But we have been unable to obtain from counsel for those respondents execution of a stipulation which would accomplish the agreed-upon objective.

STATEMENT OF THE CASE

Some time prior to April 1955, the Hotel Employees Union began an organizational campaign among the employees of resort hotels in Miami and Miami Beach, Florida. Unable to obtain recognition, the Union called strikes at a number of those hotels, including the four hotels involved in this petition. The striking employees set up picket lines. Among the hotels at which a strike was first called, in April 1955, were the Saxony and the Sans Souci. In each case the employer hotel filed a complaint in the Circuit Court for Dade County seeking to enjoin the picketing.

The complaints were substantially identical. The Sax complaint is typical: it alleged that the plaintiff's hotel business was lucrative, that the hotel had an enviable nationwide reputation, and that the plaintiff enjoyed the most cordial labor relations with its employees. (Sax R. 2). According to the complaint, however, "one or two carpet-bagger labor organizers arrived in Miami Beach for the purpose of stirring up labor discord by creating a lucrative labor organization by which said carpet-bagger organizers could reap a harvest of money from the employees of the hotels in Miami Beach through dues which the said organizers expected to charge said employees in the event they could inveigle said employees to join with said organizers in creating a labor union." (Sax R. 3). The efforts of the two "carpet-baggers," according to the complaint, were a failure. But the organizers attempted to compel the owners of the Miami Beach hotels to recognize the union nevertheless in order to enable the union to procure membership among the employees. When the plaintiff employer refused to comply with this demand, according to the complaint, the union placed a picket line consisting of six or more pickets in front of the hotel carrying a sign alleging that the hotel had refused to negotiate with the union, which sign, the complaint alleged, was false. In addition, according to the complaint, the union called a meeting of

the employees of the hotel and induced a minority of the employees to strike and cease work. (Sax R. 5-6).

According to the complaint, the pickets congregated in front of the hotel in large numbers, accosted employees loyal to the employer and intimidated them in various ways in order to coerce them not to work.

The conduct of the union was alleged to constitute a violation of various subdivisions of Section 447.09 of the Florida Statute, 1955, regulating strikes and picketing, and a preliminary injunction was requested restraining the union from maintaining a picket line or advertising or publishing any false or scandalous statements in reference to the plaintiff's business or in any manner boycotting or injuring the plaintiff. (Sax R. 1-10).

The First Litigation Phase: Action by the Trial Courts on the Applications for Temporary Relief (April-May 1955)

The first phase of the litigation sequence was the action of the trial courts on the applications for preliminary injunction. In all of the cases two major questions seemed to be presented: (1) whether there was a sufficient showing of violence or intimidation to warrant an injunction, and (2) whether, if the picketing was peaceful, it was nevertheless unlawful under some "unlawful purpose" doctrine. Violent picketing could, of course, be enjoined. With respect to the second question, the law of Florida as of the date of the hearings seemed to be if picketing could be shown to be for the purpose of coercing an employer to coerce his employees to join a union it was unlawful. *Treasure, Inc.* v. *Hotel Employees Union,* Fla., 72 So. 2d 670 (1954); *International Typographical Union* v. *Ormerod,* Fla., 59 So. 2d 534 (1952). On the other hand, the employer's belief, however reasonable, that this was the purpose of the picketing was insufficient if there was, in fact, a different purpose. *Hotel & Restaurant Employees* v. *Cothron,* Fla., 59 So. 2d 366 (1952). Picketing by non-employees for organizational purposes (*Whitehead* v. *Miami Laundry Co.,* 160 Fla. 667,

36 So. 2d 382 (1948)) or by a union representing only a minority of the employees (*Johnson* vs *White Swan Laundry,* Fla. 41 So. 2d 874 (1949) was lawful. It was clear Florida law that the publication of facts concerning a labor dispute, whether or not true and irrespective of whether a "bona fide labor dispute" existed, could not be restrained in any manner. *Moore* v. *City Dry Cleaners and Laundry,* Fla., 41 So. 2d 865 (1949). Finally, as stated by the Florida Supreme Court, "there is no rule, regulation or law of this State which requires a notice to the employer of the reasons for an impending strike, and prerequisite to picketing, and the Courts are without power to supply such rule, regulation or law." *Hotel & Restaurant Employees* v. *Cothron,* supra.

These cases seemed to establish the principles to be applied on the application for temporary injunctions in the Sax and Sans Souci cases. Although the cases were assigned to different chancellors of the Circuit Court, a joint hearing was held at which both parties presented evidence.

In both cases, the applications were denied. As to violence, the chancellors found in each of those cases that an insufficient showing had been made for injunctive relief on the basis of the manner of the picketing and the method in which it was conducted, and therefore denied relief on that ground without prejudice to reapplication at a later date. With respect to the allegation that the picketing, even if peaceful, was conducted for an unlawful or illegal purpose, the chancellors reserved decision until answers had been filed.

The Second Phase: Reversal by the Supreme Court of Florida (May 27, 1955)

Instead of waiting for answers to be filed and the "unlawful purpose" question to be decided, the plaintiffs sought review in the Supreme Court of Florida by writ of certiorari. On May 27, 1955, that Court, reversing the trial courts, directed that temporary injunctions issue.

The Supreme Court's opinion was issued in the Sax case. It specifically upheld the chancellor as to the finding that no violence had occurred, but held that in the absence of an answer the allegations of the sworn complaint should have been taken as true (despite conflicting testimony (Sax R. 14-336)), and that they made a sufficient showing that the picketing was for an unlawful purpose.

The Supreme Court concluded that it was clear, on the basis of these allegations, "that the real purpose of the picketing was to force the employees of the Saxony Hotel to designate the union as their bargaining agent and to coerce the hotel owners to sign contracts with the union as a basis to compel the employees to become members of the union." Picketing for such purpose was unlawful under the prior decisions of the Florida Court.

In the course of reaching its conclusion, however, the Supreme Court also seemed to set new standards for lawful picketing. It seemed to say that in order for picketing to be lawful the union (1) must establish that the employees have chosen it for their representative, (2) must inform the employer of the object to be accomplished by the picketing, (3) must afford to the employer a fair opportunity to engage in negotiations, and (4) must not express false statements as to the facts of the labor dispute.

The Third Phase: Further Hearings on the Basis of the Sax Decision (June-October 1955)

Following the Sax opinion, the trial courts, in obedience to the mandate of the Supreme Court, issued preliminary injunctions. These injunctions prohibited all picketing and the carrying of any signs or placards in the vicinity of the hotel. In addition, in a separate paragraph, they enjoined the defendants "and all affiliated organizations" "from publishing or causing to be published any statements to the effect that a strike, walkout or cessation of work is in effect at the . . . hotel, or that the plaintiff refuses to negotiate or

recognize the defendants or affiliated organizations . . ." (Sax R. 378-80; Souci R. 29.)

The union had, in the meantime, filed its answers to the complaints. The union's answers, typified by the Sans Souci answer, denied that no labor dispute existed, denied that it had never sought to negotiate with the hotels, denied that violence had existed, and denied that the picket banners were false (Souci R. 16-22). Affirmatively, the union alleged that it represented a majority of the employees, that its picketing was for the lawful purpose of seeking bargaining rights for the employees, and that any restriction on such picketing would violate the guarantee of the 1st and 14th Amendments in the U. S. Constitution (Souci R. 22-23). The union then proceeded, in the Sans Souci case and others, to file motions to vacate or dissolve the injunction.[3]

These motions came on for hearing on June 17, 1955. The union took great pains to abide by the dicta in the Sax decision. Thus, they brought into court the individual employees who had designated the union as their bargaining representative (Souci R. 147 et seq., 160-61). One of the union's organizers testified that more than a majority of the employees at the Sans Souci had designated the union as their bargaining agent (Souci R. 220). The union also presented signed applications for membership and membership cards (Souci R. 218).

The same organizer also testified that he had approached the Hotel Association (Souci R. 230) with reference to the Sans Souci, and had contacted the owner of the hotel (Souci R. 254-57, 261-62) in an attempt to negotiate and advise them of the object of the picketing. Evidence was also produced that a strike vote was taken on May 25, 1955, in which 103 out of 180 employees voted to strike (Souci R. 274).

On the basis of testimony, the trial court dissolved the

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[3] No such motion was filed in the Sax case.

injunction.[3a] The court, in its opinion, considered the application of Section 447.09(3) of the Florida Statutes (1955), which makes it unlawful to participate in any strike, walkout, or cessation of work without the same being authorized by a majority vote of the employees involved. The court first found that the requirements of this statute had been met by virtue of the strike vote taken after the strike had begun. If the fact that the strike vote was held later were regarded to be material, the court said that it would have to consider whether Section 447.09(3) was constitutional and concluded that the section was unconstitutional. (Souci R. 36-38).

The court discussed in detail the new requirements for lawful picketing which appeared to be set forth in the Sax opinion, viz., that the union must establish that the employees had chosen it as their representative, must inform the employer of the object to be accomplished by the picketing, and must afford him an opportunity to negotiate before beginning to picket. It pointed out that these requirements were contrary to the prior decision of the Supreme Court of Florida in the *Cothron* case which said that "there is no rule, regulation, or law in this State which requires notice to the employer of the reasons for an impending strike as a prerequisite to picketing." However, the court said, the picketing was lawful even under the new requirement. "There is no doubt in the court's mind that the plaintiff knew that the union desired to negotiate and that the negotiations were to be about wages, hours, and working conditions of its employees who were represented by the union . . . the plaintiff knew of the union's desire to negotiate long before the pickets were established but by the plain-

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[3a] The Supreme Court of Florida within the week issued an order that the petition for certiorari which had been filed in the second phase, on May 16, 1955—prior to the trial court hearing—should have "the force and effect of . . . a supersedeas" of the June 17 order vacating the injunction (Souci R. 315). This meant, of course, that picketing was enjoined pending further review.

tiff's evasive and stalling tactics did not intend to negotiate and refused to do so." (Souci R. 39-40).

At about the same time as the chancellor in the Sans Souci case issued his order vacating the preliminary injunction, two other judges, in the same court, had to deal with issues arising on similar complaints which were first filed during this third phase.

In the San Marino case the picketing did not commence until June 15, 1955, *after* the decision in the Sax case. The union meticulously met every requirement laid down in the Sax opinion. Thus, it advised the hotel by mail and in person that it represented a majority of the employees (Marino R. 24). It forwarded to the employer a letter from a certified public accountant that the records of the union indicated that a majority of the employees had designated it as their collective bargaining agent (Marino R. 31). It conducted a secret-ballot strike vote *prior* to picketing (Marino R. 109-111). The picketing did not commence until after all attempts at negotiation had been exhausted and, according to the evidence, the picketing was conducted "peacefully, in a gentlemanly way." (Marino R. 106).

At the hearing on the petition for an injunction the trial court found that the only difficulty was that the hotel apparently was still not satisfied that the union represented a majority of the employees. Accordingly, the court determined to appoint a commissioner to conduct a secret-ballot election. To prevent coercion from either side, it enjoined further picketing pending the holding of the election (Marino R. 134-135).[3b]

In the Versailles case the union again meticulously met

[3b] The Supreme Court promptly, on July 27, issued an order of supersedeas staying that part of the trial court's order which provided for an election. It refused, however, to stay the accompanying injunction against picketing which the trial court had issued in aid of the election order.

the prerequisites laid down in the Sax opinion (Vers. R. 21-24). There was no dispute that the employer knew that the union desired recognition. As in San Marino, the union had submitted a certified statement of its majority status (Vers. R. 21-25) and had conducted a secret-ballot strike vote. (R. 50-51). There were even some preliminary negotiations with the hotel, which bogged down when the hotel demanded the right to check the majority status of the union by individually inquiring of each employee whether or not he favored the union and refused to permit such status to be checked by secret ballot (Vers. R. 104).

On the basis of the evidence, the court in the Versailles case found that the picketing which had been in progress since June was at all times peaceful and "for the lawful purpose of inducing the employer to recognize and negotiate with the defendant's union." The court further found that the union had established that "a majority of the employees had chosen it as their representative and that the labor organization had also informed the employer of the object to be accomplished by the picketing and that a fair opportunity was afforded to the employer to engage in negotiations." The court therefore denied the application for a temporary injunction. (Vers. R. 127-28).

During this period the union filed supplemental answers in all of the instant cases, alleging that the plaintiff hotels were engaged in interstate commerce and that the state court lacked jurisdiction because Congress had pre-empted the area under the National Labor Relations Act (Sax R. 381-83; Souci R. 343-45; Marino R. 33-35; Vers. R. 56-59).[4]

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[4] During this same period the union, on June 29, 1955, filed a representation petition with the National Labor Relations Board seeking an election in the various hotels, in accordance with Section 9(c) of the Labor-Management Relations Act (61 Stat. 143, 29 U.S.C. §159(c)). This petition was dismissed, the Labor Board refusing to take jurisdiction under its jurisdictional standards. (Sax R. 554). On July 7, the union also filed unfair labor practice charges,

The Fourth Phase: The Supreme Court Again Intervenes (October 1955-January 1956)

Petitions for certiorari were again filed with the Supreme Court of Florida. And that court again reversed the trial courts.

The first opinion in this phase of the litigation was issued by the Supreme Court of Florida in October 1955. It covered six cases, including Sans Souci, in which similar findings had been made and preliminary injunctions vacated. The opinion is usually referred to as *Boca Raton Club* v. *Hotel Employees Union,* since that was the first case in the caption.

In this opinion the Supreme Court of Florida faced two problems: (1) the plain contradiction between the law of Florida prior to these cases, as expressed in the *Cothron* case, and the prerequisites for lawful picketing set forth, as dicta, in the *Sax* opinion; (2) the fact that the trial court had found that the union had met the requirements of the *Sax* opinion.

The first problem the Court met "forthrightly." The *Cothron* opinion had stated that there was no Florida law requiring notice to the employer of the reason for an impending strike as a prerequisite to lawful picketing and that the courts had no authority to create one. But, the Court now said, "although there may exist 'no rule, regulation or law of this State which requires' the foregoing prerequisites, certainly honesty of purpose, fair dealing and a

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complaining of the refusal of the hotels to bargain and discriminatory discharges in violation of Section 8(a)(3). These were also dismissed on the same basis.

The union subsequently brought suit in the United States District Court for the District of Columbia seeking to compel the Board to take jurisdiction. The District Court dismissed the complaint (Hotel *Employees* v. *Leedom*, 147 F. Supp. 306). An appeal from that dismissal is now pending before the United States Court of Appeals for the District of Columbia Circuit (No. 13,765).

sound public policy demand them." Furthermore, the Court said, Section 447.03 of the Florida Statutes gives employees the right to self-organization and collective bargaining through representatives of their own choosing and it is therefore appropriate for the courts to fix reasonable and fair prerequisites to that end.

The second question was no more troublesome to the Court. Although the union had shown that it represented some of the employees it had not shown that it had presented substantial evidence of that fact to the employers prior to the strike. "It is not sufficient," said the Court, "to establish even in court, after picketing is a reality, that the putative bargaining agent had in fact, prior to picketing, been so designated by an insignificant number *or, for that matter, a majority of the employer's employees.*" (Emphasis added.)

The Court concluded, therefore:

> "We hold that the picketing in these cases was begun by respondents without first having submitted to the petitioners competent substantial evidence of their authority as alleged bargaining agents, which caused the picketing to be unlawful, and that the picketing was carried on for an unlawful purpose.
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> "We do not deem it necessary to determine the applicability in these cases of Sec. 447.09(3) Florida Statutes or its constitutionality.
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> "The petitions for certiorari should be granted and the challenged orders quashed."

That this new requirement for lawful picketing would be applied even where the union proved that it represented a majority was demonstrated in the Versailles case. In that case, the trial court had found that the union represented a majority of the employees, that it had informed the employers of the object to be accomplished by the picketing and that it had afforded him a fair opportunity to negotiate. Despite these findings, the Supreme Court, on December 14,

1955, on the authority of *Boca Raton*, reversed the trial court's order denying a temporary injunction and directed that the injunction prayed for be issued (Vers. R. 144).

The same fate was necessarily to befall the decision of the chancellor in the San Marino case who, as a way out of the dilemma presented by the difficulty of proof of majority status, had ordered a secret ballot election to be conducted. In January 1956, the Florida Supreme Court, again on certiorari, set aside the order for an election but continued in effect the temporary injunction against picketing which the trial court had entered pending such election. The case, the court said, was substantially the same as the earlier cases in the sequence. There was no precedent, it said, for the appointment of a commissioner to conduct an election. The union's claim that it was desirable to have a secret ballot in order to protect its members against "blacklisting," had no vitality, the court said, because the union had in fact filed in the case some membership cards signed by their alleged members. The appropriate procedure to determine the question of the majority status of the union was, the Supreme Court said, the traditional equity procedure heretofore recognized in the courts, including the cross-examination of the individual members (Marino R. 148-52).

The Fifth Phase: Final Orders in the Trial Courts (November 1955-February 1956)

The judgments of the Florida Supreme Court in both the second and fourth phases were all issued on preliminary injunction and, hence, could not be reviewed in this Court. *Montgomery Bldg. Trades Council* v. *Ledbetter Co.,* 344 U.S. 178 (1952). The union had not, in any of these cases, actually tendered its membership cards to the employer before striking, since no such requirement had even been suggested at the time. Nor, since the employers now regarded the strikers as no longer being employees, and the National Labor Relations Board had refused to take jurisdiction over

the union's complaint that this constituted an unfair labor practice, could the union ask its members now to return to work and then satisfy the Florida Court's new requirements before again striking. The only course, therefore, was to return to the trial courts and obtain final orders as the basis for a new appeal to the Florida Supreme Court and, ultimately, to this Court.

This was done. Pursuant to stipulation final orders were entered in the Sax and Sans Souci cases on November 30, 1955 (Sax R. 407; Souci R. 352); in the Versailles case on January 9, 1956 (Vers. R. 153); and in the San Marino case on February 27, 1956 (Marino R. 158). The cases were consolidated, for purposes of briefs and argument, in the Florida Supreme Court with 18 other similar cases. Briefs were filed in May and July 1956 (Sax R. 425-556) and all 22 were ready for final disposition.

The Sixth Phase: The Fontainebleau (February 1957)

While these 22 cases were pending in the Supreme Court of Florida on appeals from final orders, the Florida Supreme Court, on February 1, 1957, issued a new opinion, on certiorari from denial of a temporary injunction, again changing the rules. The case was *Fontainebleau Hotel Corp.* v. *Hotel Employees Union,* 92 So. 2d 415.

In the Fontainebleau case, the plaintiff filed its complaint in December 1955, after the Supreme Court's successive Saxony and Boca Raton opinions. In accordance with the Saxony opinion, the trial court issued a temporary restraining order, prior to hearing, on the basis of the plaintiff's sworn petition. On January 30, 1956, after answer, a hearing was held. The chancellor found that the union had met the standards set forth in the Boca Raton opinion of the Florida Supreme Court and dissolved the temporary injunction. Again, as in the earlier cases, the plaintiffs sought certiorari in the Florida Supreme Court to quash the order dissolving the temporary injunction. The Florida Supreme Court complied.

It is difficult to state with any confidence precisely what the Court held in the *Fontainebleau* case. The Court for the first time, seemed to rely upon the provisions of Sections 447.01 and 447.09 of the Florida Statutes, 1955. These statutes, the court said, "require that all employer-employee relations be conducted decently and in order." The court then went on to consider the trial court's statement that under the Boca Raton opinion, the union must, prior to striking, show that it represented "at least some of the employees," but need not prove a majority. The language in Boca Raton, the Supreme Court said, was not a proper statement of the law, but a "mere expletive of the situation before the court." A majority vote *was* required both by the federal law and state law, the court said, before a strike could be called.[5] But, it went on, there was no such requirement as to picketing.

As to picketing, the court said, "law, order and decency require that it be done in an atmosphere conducive to reaching a result that it is fair to the employer, the employees and the public. If attempted in an atmosphere of violence, insinuation, bad faith, deception, farce, or damned-if-I-don't-show-you spirit, it would not be recognized as a means of adjusting labor disputes."

Turning to the factual record in the case before it, the court said that the correspondence conducted between the employer and the union, as well as the evidence taken at the trial "exhibit bad faith, a lack of respect one for the other, a tense feeling between them and a disposition to haggle over the issues if there were any." The court then recited seven charges by the plaintiffs, mostly consisting of charges that the union had violated the standards set forth in the Sax and Boca Raton opinions. It said, "Respondents deny or evade these charges but the evidence supports most of them"; it did not, however, specifically discuss the par-

[5] There is, of course, no such requirement under federal law and the states are forbidden to impose one in an industry affecting commerce. See *Auto Workers* v. *O'Brien,* 339 U. S. 454.

ticular factual findings of the chancellor which it found to be reversible.

After stating that it was not "conclusively shown that any bona fide labor dispute existed in petitioner's hotel," [5a] and various factual reasons therefor, including the existence of "violence or near violence" condemned by the statute, the court concluded by stating what seems to be an entirely new rule with respect to picketing conducted by a union, as opposed to picketing by individual employees.

Any number of employees, even if less than a majority, ("as distinguished from representatives of a labor union") could not be prohibited, the court said, from engaging in lawful picketing as individuals for the purpose of truthfully acquainting the public with their grievances *if they complied with the prerequisites to lawful picketing set forth in the Sax case.* However, the court said, this rule was applicable to employees only. As to the union as such, it could not, under the circumstances presented, engage in picketing by use of the members of the union as pickets who are not employees.

Presumably this concluding paragraph of the Florida Court means, if it means anything, that the requirements set forth in the prior opinions of the court were applicable to employee picketing, but that even if those requirements were met, union picketing should be prohibited under the circumstances of the Fontainebleau case.

[5a] The Court, throughout the opinion, seemed to reverse the normal burden. The chancellor, after hearing, had denied injunctive relief to the plaintiffs. The assumption of the Supreme Court seems to have been that his decision should be reversed unless the respondent union could show that *it* was entitled to relief. Lack of evidence, or "conclusive" evidence, in the record on any point—as to the truthfulness of the placards, as to the existence of a bona fide labor dispute, as to dissatisfaction with working conditions, as to the fact that the "gravamen of the picketing . . . originated within the confines of the . . . hotel," was assumed to be sufficient to require reversal and a direction that the trial court enjoin all picketing.

The Seventh Phase: Final Decisions by the Florida Supreme Court (March 15, 1957)

The instant cases were finally decided by the Florida Supreme Court on March 15, 1957. They were not decided, however, on the basis of the Supreme Court's prior Saxony or Boca Raton opinions. To the contrary, in each of 22 cases a *per curiam* order was entered affirming, on the authority of Fontainebleau, the injunctions entered below (Sax R. 419; Souci R. 362; Vers. R. 162; Marino R. 169).

The uncertainty in the language of the Supreme Court of Florida in Fontainebleau makes it less than clear how the opinion in that case applied to the instant cases. Certainly, none of the language as to violence or as to the failure of the union to represent the employees or to afford the employer an opportunity to engage in negotiations could be said to apply. In none was there any finding of violence. In some of the cases there was a finding, unreversed by the Supreme Court of Florida, that the union represented a majority of the employees and that it had afforded to the employer an opportunity to engage in negotiations before it called the strike and began picketing. To the extent that meaning can be derived from the fact that the Supreme Court of Florida, in all of the cases, relied on Fontainebleau, therefore, it must be assumed that the portion of the opinion referred to was the portion stating that picketing by a union, as distinguished from picketing by individuals, is subject to the requirement, unstated in the earlier opinions but set forth in Fontainebleau, that it "be done in an atmosphere conducive to reaching a result that is fair to the employer, the employees and the public" not in an atmosphere of "insinuation, bad faith, deception, farce, or damned-if-I-don't-show-you spirit."

How the Federal Questions Were Raised and Preserved

The Federal questions sought to be reviewed here by the union were appropriately raised and argued—although largely ignored by the Florida courts—in each of the cases.

The contention that the injunctive orders sought would violate the 14th Amendment and the right of free speech was raised in each case by the union in its first responsive pleadings (Sax R. 373, 376; Souci R. 23, 26; Marino R. 17; Vers. R. 36). Since the trial courts in each case refused to issue the temporary orders requested, they did not pass upon this contention.

The Florida Supreme Court, in its Saxony and Boca Raton opinions, recognized the existence of a free speech question but, in each case, dismissed the union's constitutional contention by stating that picketing for an "unlawful purpose" was not constitutionally protected.

On the final appeal, the union specified in great detail in its assignments of error, its contention based upon the 1st and 14th Amendments, both as to the injunction against picketing and the restraint against other publication. In accordance with Rule 23(1)(f) of the Rules of this Court, there is reprinted in Appendix B, hereto, the full text of the assignment of errors in the Sax case (Sax R. 410). The assignments of error in the other cases were practically identical (Souci R. 355; Marino R. 160; Vers. R. 155).

The Florida Supreme Court, in affirming the final orders on the basis of its Fontainebleau opinion, presumably adopted the discussion in that opinion of the free speech contention based on the *Swing* case. That discussion consisted of a statement that, under *Swing,* "there are circumstances in which the right to picket is an aspect of free speech and may not be infringed" but that the law placed limitations on that right.

The contention that the Florida courts lacked jurisdiction because of the exclusive Federal regulation of labor relations in industries affecting commerce was also raised by answer or supplementary answer in the trial courts (Sax R. 381; Souci R. 343; Marino R. 33; Vers. R. 56). In the Saxony and Sans Couci cases, the union's offer of proof in support of this contention was rejected without discussion

on grounds that it was immaterial and irrelevant (Sax R. 407; Souci R. 352). In the Versailles case, a motion was made to strike this defense on the ground that the facts alleged were immaterial and insufficient to state any defense (Vers. R. 59). The trial court ignored both the defense and the motion in granting final relief (Vers. R. 149). The question was preserved in each case by the union's assignment of errors (Sax R. 410; Souci R. 355; Vers. R. 155). The Florida Supreme Court, in affirming the final orders, rejected the contention by ignoring it.

In one case—San Marino—the trial court, after the initial hearing, found that the allegation of interstate commerce was not supported by evidence and explicitly overruled the union's jurisdictional contention (Marino R. 36). On final decree, however, the chancellor adopted the same course of action as that adopted in the other cases, striking the defense based on lack of jurisdiction and the affidavit in support thereof. (Marino R. 158). The union's assignment of errors specified that the trial court's action in refusing evidence of the exclusive jurisdiction of the National Labor Relations Board was in error (Marino R. 160).

One brief was filed by the union covering all 22 cases in the Florida Supreme Court. It is included in the record of the Sax case, as is the brief filed for the employer (Sax R. 426-556). These briefs show that issue was squarely joined on the merits of both Federal questions in the final hearing before the Florida Supreme Court.

REASONS FOR GRANTING THE WRIT

1. These cases, with the other cases simultaneously decided by the Supreme Court of Florida, present an important question of federal constitutional law, viz., whether the 14th Amendment prevents state courts from enjoining all picketing where:

(a) the picketing is peaceful;

(b) the effect of the picketing is to inform the consuming public at large of the existence of a labor dis-

pute rather than to "signal" action by other unions or employees;

(c) the "unlawful purpose" on the basis of which the picketing is enjoined is a variable subterfuge, plainly designed to prevent all picketing irrespective of its purpose;

(d) the prohibition is applicable only to union picketing, not to picketing by employees.

In *Teamsters Union* v. *Vogt,* 354 U. S.——(1956 Term No. 79), this Court reiterated its earlier holding in the *Thornhill* [6] and *Swing* [7] cases that "state courts, no more than state legislatures, can enact blanket prohibitions against picketing." It also concluded, however, that *Thornhill* and *Swing* did not necessarily bar state action where "a state had designed a remedy to meet a specific situation or to accomplish a particular social policy." There was, the court said, "a broad field in which a State, in enforcing some public policy . . . . . could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy."

This case, we believe, presents squarely the question as to whether there remains any constitutional limitation on the cases in which the states may prohibit peaceful picketing. If picketing can be forbidden for the reasons set forth by the Florida Court in these cases, then the "broad field" discussed in the *Vogt* case is, in fact, the universe; no state action against picketing will transgress the constitutional requirements of the 14th and 1st Amendments.

In the *Vogt* case itself, as well as in most of the other cases following *Thornhill* and *Swing* in which this Court has upheld a prohibition against peaceful picketing, there have been two elements:

(1) "picketing that involved more than publicity" that is, picketing which caused employees of suppliers, trucking companies, etc., to refuse to deliver or haul

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[6] *Thornhill* v. *Alabama,* 310 U. S. 88.

[7] *AFL* v. *Swing,* 312 U. S. 321.

goods, rather than picketing directed solely to the public at large for the purpose of persuading them to withhold patronage; *and*

(2) a particular and defined social policy which would be violated if such picketing were permitted.

As this Court stated in the *Vogt* decision, the picketing decisions of the Court constituted a "review of the balance struck by a state between picketing that involved more than 'publicity' and competing interests of state policy."

In the present cases, neither of the above two factors is present. The only effect of the picketing, and the only damage alleged in the complaints, was that "members of the public are being deterred and stopped from patronizing" (Sax R. 8) the struck hotels.[8] That the restraint sought, and granted by the Florida courts, was restraint against the informational effect of the picketing on the public at large, i.e., picketing as publicity, is emphasized by the fact that, in the Sax and Sans Souci cases, the injunctions against picketing were coupled with an injunction against "publishing or causing to be published any statements to the effect that a strike, walkout, or cessation of work is in effect at the Hotel, or that the plaintiff refuses to negotiate or recognize the defendants or affiliated organizations as a collective bargaining agent. . . ."

Nor, as the sequence of the decisions makes clear, did the picketing here transgress any defined social policy of the state. When the picketing began, the only relevant defined social policy of the state was the one enforced by Wisconsin in the *Vogt* case—it was unlawful to coerce an employer to coerce his employees to join a union. As the litigation progressed, and it was clear that no case of violation of this

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[8] Although the complaints almost uniformly charged that the hotels' loss of custom resulted from harassment and threatening of the hotel guests, as well as from the information presented by the picket signs, no evidence in support of these allegations was introduced and the decrees rest entirely on the persuasive effect of the pickets upon customers.

policy could be made out, the Florida Supreme Court set up new prerequisites for lawful picketing. Then, when the union showed that in fact it met even these new rules, the Florida Supreme Court set up still further new rules. Finally, as stated by that court in the Fontainebleau case, even if those rules were satisfied, picketing by the union—although not by the employees—could be forbidden because the union in its prior negotiation demonstrated "a lack of respect" for the employers and "a disposition to haggle over the issues if there were any." As we read the decisions of this Court, including the *Vogt* decision, this kind of prohibition of peaceful advertisement to the general public is still prohibited by the 14th Amendment.

2. Even if we assume that the rules explicitly laid down in Boca Raton and Sans Souci and applied in Versailles *are* the rules, and even if we were to assume that they had been in effect from the beginning, there still would remain a serious constitutional question.

The essence of the Boca Raton rule is that peaceful, persuasive picketing for the purpose of obtaining union recognition will be enjoined by Florida if the union has not, prior to calling a strike in support of its demand for recognition, submitted its membership list to the employer. As the Versailles and San Marino cases show, it will not do for the union to submit a certified statement by an auditor that he has examined the membership cards held by the union and that they constitute a majority of the employees in the union. As the San Marino case shows, the union cannot ask, even as a defense against an injunction, that the court conduct a secret ballot election. The necessary pre-condition for picketing is that the union, before it calls its members out on strike, submit the cards they have filed to the employer.

What this means, in practical effect, is that as a condition for publicizing its dispute with an employer, a union must first provide him with the means for destroying it. In a state such as Florida, which provides no mechanism for

holding secret ballot elections nor any administrative remedy for those discharged for union membership or activity, the conditions established by the Florida court effectively preclude any picketing by a union in support of a demand for recognition. The information which Florida has required that the union supply plainly is the information which any employer needs in order to enable him to discharge the adherents of the union at his convenience and to apply the now fortunately infrequently-used technique of the blacklist. It is the rare worker who, unprotected by the National Labor Relations Board will willingly sign up with an unrecognized union if he knows that the union will deliver his name to the employer.

None of the cases in which this Court has permitted states to effectuate their social policies by restricting the use of the picket line as a method of communication goes so far as to indicate that a state can require this kind of a condition for peaceful picketing. Neither *Ritter's Cafe*,[9] *Giboney*,[10] *Hughes*,[11] *Gazzam*,[12] *Hanke*,[13] *Graham*,[14] nor *Vogt* even suggest that a state may impose conditions on peaceful picketing which will effectively frustrate the very organization of labor unions.

To condition the right to picket on the prior submission by a union of a blacklist is itself, we submit, a violation of due process of law.

3. As already noted, the Florida Court here approved injunctions which prohibited not only the communication of information to the public by way of picket signs but also any publication, through handbills, advertisements, or otherwise, of the existence of a strike at the plaintiffs' hotels, or of the refusal of the plaintiffs to negotiate. This is not

[9] *Carpenters Union* v. *Ritter's Cafe*, 315 U. S. 722.
[10] *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490.
[11] *Hughes* v. *Superior Court*, 339 U. S. 460.
[12] *Building Service Union* v. *Gazzam*, 339 U. S. 532.
[13] *Teamsters Union* v. *Hanke*, 339 U. S. 470.
[14] *Plumbers Union* v. *Graham*, 345 U. S. 192.

the kind of "argumentative excess" which "astuteness may discover" in reading the terms of the injunction against picketing to which this court referred in the *Vogt* case. On the contrary, it is a separate and distinct restraint, wholly unrelated to the restraint against picketing.

Nor can this restraint on the dissemination of information be justified by any claim that the prohibited publication would be false or libelous. The plaintiffs did allege—although the chancellors found otherwise in unreversed findings—that the hotels had not refused to negotiate with the union. But the plaintiffs admitted and, indeed, asserted that the union had called a strike at their hotels. And they procured an injunction from the Florida courts forbidding the union to publish any statement of this fact.

We can think of no justification under the decisions of this Court which would sustain the constitutionality of this plain restraint on freedom of communication.

4. The decision of the Florida courts in all of these cases is plainly contrary to the decision of this court in *Guss* v. *Utah Labor Relations Board,* 353 U.S. 1 (1957). There can be no serious dispute that these hotels are engaged in a business which affects interstate commerce. In all of the cases there are undisputed affidavits to that effect which the trial courts held to be irrelevant. Furthermore, this Court can take judicial notice of the fact that there is now pending in the Court of Appeals for the District of Columbia a suit in which it is conceded by the National Labor Relations Board that the business of these hotels comes within the statutory definition of commerce contained in the National Labor Relations Act.[15]

It is true, of course, that the National Labor Relations Board has refused to take jurisdiction over the present cases. But this refusal, as in the *Guss* case, was based upon a

[15] In *Hotel Employees* v. *Leedom,* No. 13,765, now pending in the Court of Appeals for the District of Columbia, the union filed a complaint alleging that the Board had refused to take jurisdiction over

claimed discretionary right to refuse jurisdiction, not upon any contention that the labor relations practices of these hotels are not governed in substance by the National Labor Relations Act.

In the *Guss* case, this Court held that the refusal of the National Labor Relations Board to exercise jurisdiction does not confer jurisdiction upon the states to regulate labor relations matters which they would be forbidden to regulate, under the terms of the National Act, if the Board would exercise jurisdiction. This case comes squarely within the terms of the *Guss* decision. Indeed, it provides a much clearer case of conflict with federal law than was presented in *Guss*.

In the *Guss* case, as well as in the two companion cases, the party proceeded against under state law claimed that the state had no jurisdiction because the conduct sought to be enjoined was also a violation of federal law. This Court sustained that contention. In this case, the party proceeded against in the state courts—the union—contends, without fear of substantial contradiction, that the activities which Florida has restrained are activities which are protected against interference by the terms of Section 7 of the National Labor Relations Act. This case, in short, is not *Garner* [16] but *O'Brien*.[17]

This distinction is particularly emphasized by the fact that throughout the Miami controversy the union has used every possible effort to procure the intervention of the Na-

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a representation petition, and over unfair labor practice charges against each of the hotels here involved. The union asked, inter alia, that the Board's orders be set aside and that it be enjoined from refusing to take jurisdiction. The Board did not contest the union's commerce allegations but defended solely on the ground that the District Court had no jurisdiction and that the complaint failed to state a claim on which relief could be granted. The District Court granted summary judgment to the Board, upholding the Board's discretionary refusal to increase its statutory jurisdiction, 147 F. Supp. 306.

[16] *Garner* v. *Teamsters Union*, 346 U. S. 485.

[17] *Auto Workers* v. *O'Brien*, 339 U. S. 454.

tional Labor Relations Board. It filed petitions with the Board to conduct secret ballot elections. It filed charges of unfair labor practices against the employers. And it is now engaged in an effort, through litigation, to compel the Board to exercise its plain statutory mandate to apply the National Labor Relations Act to these disputes.

This union does not seek refuge in a "no man's land." It has no desire to avoid regulation by either state or federal bodies. It seeks only to protect rights guaranteed to it by Federal statute and, indeed, until this litigation, by Florida law.

5. There is one final, and, we believe, overriding reason why the writ should be granted in these cases, and the judgments below reversed.

The story of this litigation, as plainly revealed in the records of the cases, is a travesty on due process of law. There are, we submit, clear enough substantive conflicts with the governing federal law to warrant granting the writ here. But, perhaps even more importantly, the Florida Court by its course of decision in these cases has revealed as plainly as it can be revealed without specifically so stating that the substantive law does not matter—this union is to be enjoined irrespective of the law. In so doing, we earnestly and respectfully suggest, the Florida Court has violated the constitutional requirements of due process of law.

CONCLUSION

For the reasons above set forth, it is respectfully submitted that this petition for certiorari should be granted.

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APPENDIX A—OPINIONS BELOW

First Phase—Trial Court Orders

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY. No. 178554

SAX ENTERPRISES, INC.,

Plaintiff

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Defendants

ORDER DENYING PLAINTIFF'S APPLICATION FOR TEMPORARY INJUNCTIVE RELIEF

THIS CAUSE came on regularly for hearing upon the plaintiff's application for temporary injunctive relief in accordance with the prayers of the verified complaint as amended. The court has heard and considered the testimony adduced on behalf of the plaintiff, has read and considered the evidenciary exhibits of the plaintiff, and has heard and considered arguments of counsel for the respective parties. In consideration thereof, the court is of the opinion and finds that the plaintiff has not made a sufficient showing for injunctive relief on the basis of the manner of the picketing and the method in which it is being conducted.

IT IS ACCORDINGLY ORDERED, ADJUDGED AND DECREED that the plaintiff's application for a temporary injunction be and it is hereby denied, without prejudice; and

IT IS FURTHER ORDERED that, the defendants not having filed answers or other pleadings to the complaint, the allegation or contention made by the plaintiff that the picketing is conducted for an unlawful or illegal purpose is not considered nor passed

upon, but determination of this question is reserved until final hearing.

DONE AND ORDERED in Chambers this 5 day of May, 1955.

CHARLES A. CARROLL
Circuit Judge

(An identical order was entered in the Sans Souci case (*Leevlans Corp.* v. *Hotel Employees Union, et al.*) by Circuit Judge Floyd on May 11, 1955.)

Second Phase—The Sax Opinion

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1955, SPECIAL DIVISION A

CASE No. 26,187

SAX ENTERPRISES, INC.,

Petitioner

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.) AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents

Opinion filed May 27, 1955.

A WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR DADE COUNTY, CHARLES A. CARROLL, JUDGE.

HOBSON, J.:

Petitioner is the owner of one of the popular hotels of Miami Beach, the Saxony. Respondents comprise Hotel Employees Union Local No. 255 (A. F. of L.), its business agents and officers. Petitioner filed a complaint wherein it prayed that respondents be enjoined from picketing its hotel on account of violence and that the picketing was done for an unlawful purpose. On application for temporary injunction, evidence was taken, at the conclusion of which temporary injunction was denied. As to the contentions that the picketing was for an unlawful purpose, the chancellor specifically recognized that to be the main issue in the case but refused to adjudicate it because no answer had been filed or issue made on that point. Said the chancellor, that point should be decided at final hearing after answer. His order was conditioned on expediting the cause on account of its effect on the parties. From this order, we are confronted with an appeal by certiorari.

The point for determination is whether or not the chancellor committed error in entering said order.

At the outset it is pertinent to relate that while this case was

heard in conjunction with similar cases against the Roney Plaza, the Monte Carlo, the Sans Souci, the Sherry Frontenac, the Sorrento, and the Algiers Hotels, the order involved here applies only to the Saxony Hotel. We have examined the record carefully and we find insufficient showing to reverse the chancellor on the question of whether or not picketing the Saxony Hotel was accompanied by violence. His order was "without prejudice to reapply for an injunction on the grounds of excessive conduct or violence, if such appears to be justified by future acts" and warranted by the evidence.

Whether or not the picketing was being done for a lawful purpose presents a more difficult question. Petitioner contends that it was entitled to an injunction because its complaint was sworn to and not challenged by motion to dismiss, answer or affidavit denying the facts relied on. Anderson v. Tower Amusement Co., 118 Fla. 437, 159 Fla. 782; Kellerman v. Chase & Co., 101 Fla. 785, 135 So. 127; First National Bank of Gainesville v. Massey, 132 Fla. 113, 182 So. 187; Taylor v. Florida East Coast Railway Company, 64 Fla. 635, 45 So. 574; Seaboard Oil Company v. Donovan, 99 Fla. 1296 128 So. 821; Treasure, Inc. v. Hotel & Restaurant Employees and Bartenders' Union (Fla. 1954), 72 So. 2d 670, and Osceola Groves, Inc. v. Wiley (Fla. 1955), 78 So. 2d 700, are offered to support this contention.

We must agree with petitioner's contention because in a situation such as is presented by the record in this case, when the point is raised, the chancellor is duty bound to determine on an application for a *temporary* restraining order whether the picketing was for a lawful purpose. The allegations of the sworn complaint together with the evidence introduced at the hearings upon the application for a temporary restraining order, at which hearing all parties hereto were represented, are sufficient under our opinion in Miami Typographical Union v. Ormerod (Fla. 1952) 61 So. 2d 753, the cases cited therein, and Treasure, Inc. v. Hotel & Restaurant Employees and Bartenders' Union, supra, 72 So. 2d 670, to establish the fact that the picketing which is being carried on was and is for an unlawful purpose.

Without doubt a labor organization has the right to engage in

peaceful picketing of an employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union as the representative of such employer's employees. In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative (Treasure, Inc. v. Hotel & Restaurant Employees and Bartenders' Union, supra) and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations. See North East Texas Motor Lines, Inc. v. Dickson, et al. (Texas) 219 S. W. 2d 795.

With no evidence to the contrary, the chancellor had no alternative other than to accept as true the sworn allegations of the complaint. Pertinent among these allegations are the following:

> "* * * the two organizers, one of whom is David Herman, and the other is one of the defendants, Albert H. Berlin, have utilized all the pressure tactics known to labor organizers to force and intimidate the employees of the plaintiff to become members of said labor organization. Their efforts in enlisting membership have been a distinct failure, so the said professionals determined to place pressure, intimidation and threats upon the hotel owners, in order to force said hotel owners through economic sanctions, to sign contracts with the said alleged organization, and thus use said contracts as a basis to force the employees of the hotels to become members of said alleged union.
>
> "To this end, said David Herman contacted Sol Cohen, president of the Miami Beach Hotel Owners Association, and demanded that the said Cohen negotiate with and line up all of the owners of the first class ocean front hotels on Miami Beach, to execute labor contracts with the said alleged union, thus recognizing said union as representing the employees of the said hotels, and in this fashion, to enable the said union to procure membership among the employees of said hotels. Said Herman threatened Mr. Cohen by stating that unless the Hotel Association actively enlisted the hotel owners to join with the said union by giving it contracts as

aforesaid, that the said David Herman would, through economic sanction such as picket lines around said hotels, cause them great economic loss, and thus force them, through such economic loss and pressure, to give to the said union contracts covering the employees in said hotels, who were not, in fact, members of or represented by the said alleged union in any fashion whatsoever. The Miami Beach Hotel Owners Association, and its president, has no power or authority to represent the owners of the individual hotels in reference to any labor matters involving the owners of any particular hotel."

V

"The Plaintiff has had no dealings whatever with any members of the HOTEL EMPLOYEES UNION, LOCAL NO. 255, A. F. of L. Said union has never sought to negotiate with the plaintiff as the representative of plaintiff's employees; in fact, Local No. 255 does not represent the vast majority of the plaintiff's employees. No labor controversy or negotiations in reference to any labor dispute has ever been instituted, inaugurated, or carried on between the plaintiff and the said alleged union, and the said union has never sought to bargain with the plaintiff as the alleged representative of plaintiff's employees, and plaintiff alleges that the said union has never been authorized by the vast majority of its employees to represent them."

VI

"The plaintiff has never refused to recognize the defendant union, and has never refused to negotiate with said union; the plaintiff has never been requested by the said union to negotiate with it, and has never been advised by the said union that the union is the bargaining agent for plaintiff's employees. In truth and in fact, no demand or grievance of any nature whatsoever of the plaintiff's employees has, up to the present time, been made of or placed before the plaintiff, its officers or agents.

"Notwithstanding, said union at 6 o'clock in the morning on Wednesday, April 13, 1955, placed a picket line consist-

ing of six or more pickets in front of the plaintiff's place of business, and each of said pickets in said line carried a placard or poster which falsely and fraudulently alleged that the plaintiff had refused to negotiate with the defendant union. Each of said placards carried the following words:

> 'This hotel refused to negotiate with Hotel Employees Union, Local # 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach.'

"Such representation made by said union is false and untrue and the said union knows that the said statements are false and untrue. Said statements are made for the purpose of deceiving the public. The picket line was placed around the plaintiff's place of business for an unlawful and illegal purpose in that the defendant union is carrying out its threat to the president of the Miami Beach Hotel Owners Association by placing economic pressure on the plaintiff, thereby seeking to cause the plaintiff, by loss of revenue thus occasioned, to execute a labor contract with the said union." (Tr. 3, 4, 5, and top line on p. 6)

Since, according to the allegations of the sworn complaint, the placards carried by the pickets contained false information, it cannot be said that they conveyed "information concerning the *facts* of a labor dispute." (Italics supplied.) It is therefore obvious that the purpose of the picketing is unlawful. As we said in the case of Miami Typographical Union No. 430 v. Ormerod, supra:

> "When picketing is carried on to further an unlawful purpose, as was correctly determined in this case, it loses its characteristic of free speech which is guaranteed by the first Amendment to the Federal Constitution. It becomes, as was stated by Professor Gregory in his work on Labor and the Law, cited with approval by the U. S. Supreme Court in the case of Hughes v. Superior Court of State of Calif., 1950, 339 U. S. 460, 464, 465, 70 S. Ct. 718, 94 L. Ed. 985, 'simply a species of coercion traveling under the guise of speech for the purpose of enjoying constitutional immunity * * *'."

It is clear, therefore, that the real purpose of the picketing was

to force the employees of the Saxony Hotel to designate the union or the individual respondents as their bargaining agent, and to coerce said hotel owners through economic sanctions to sign contracts with the union and to use said contracts as a basis to compel the employees of the hotels to become members of the respondent union.

Certiorari is granted as to that part of the chancellor's order which deferred a ruling upon the question whether or not the picketing was being carried on for an unlawful purpose, and the cause is remanded to the Circuit Court with directions to enter a temporary restraining order.

It is so ordered.

DREW, C. J., TERRELL AND SEBRING, J. J., CONCUR.

Second Phase—Sans Souci

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1955, SPECIAL DIVISION A

CASE No. 26,197

BOCA RATON CLUB, INC., A FLORIDA CORPORATION, AND HILDEMART CORPORATION, A FLORIDA CORPORATION,

Petitioners,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents

* * * * *

CASE No. 26,200

LEEVLANS CORPORATION,

Petitioner

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents,

* * * * *

(Captions of other cases omitted)

Opinion filed June 1, 1955.

AN APPEAL FROM THE CIRCUIT COURT FOR DADE COUNTY, ROBERT L. FLOYD, AND GLADYS L. CRAWFORD, JUDGES.

PER CURIAM:

The foregoing cases are similar to Sax Enterprises, Inc. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business

Agents and Officers thereof, decided May 27, 1955. These cases were combined and heard together in the lower court. Application for temporary injunction was denied after evidence in each case. The reason for denial was that the "plaintiff has not made a sufficient showing for relief on the basis of the manner of the picketing and the method in which it is being conducted." The court further found that "defendants not having filed answers or other pleadings to the complaint, the allegation or contention made by the plaintiff that the picketing is conducted for an unlawful or illegal purpose is not considered nor passed upon, but determination of this question is reversed until final hearing."

On authority of Sax Enterprises, Inc., vs. Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, decided May 27, 1955, certiorari is granted as to that part of the Chancellor's order in each of said causes which deferred ruling upon the question whether or not the picketing was being carried on for an unlawful purpose, and each of said causes ir remanded to the Circuit Court with directions to enter a temporary restraining order therein.

It is so ordered.

DREW, C.J., TERRELL, SEBRING AND HOBSON, J.J., CONCUR.

Third Phase—Trial Court Orders—Sans Souci

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY. No. 178667

LEEVLANS CORP.,

Plaintiff

vs.:

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.) AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRI MICHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Defendants

ORDER VACATING AND DISSOLVING TEMPORARY INJUNCTION

This matter was before this Court previously on petition for temporary injunction. Upon this petition being denied a petition for certiorari was filed and granted by the Supreme Court of Florida in which the Circuit Court was directed to enter a temporary restraining order, which was done. See opinion filed May 27, 1955.

Thereafter, the defendants' answer was filed along with other pleadings filed by both plaintiff and defendants. A motion to vacate or dissolve the injunction was filed and the testimony of witnesses was heard at two all-day hearings on the motion to vacate.

This Court having examined the files, read the testimony given at the former hearing on petition for temporary injunction and having heard the testimony given at the hearing on the motion to dissolve the temporary injunction finds:

On the 18th day of April, 1955, a large number of persons were employed at the hotel operated by the plaintiff called the Sans Souci Hotel in the City of Miami Beach, Florida. Some of these employees, comprising less than a majority, were members of the defendant union or had designated the defendant union as their

bargaining agent or representative to negotiate with their employer in all matters pertaining to wages, hours and working conditions. A representative of the local union, Mr. Dave Herman, had called on the executive president of the Miami Beach Hotel Association, an association to which the plaintiff belonged, and was asked to negotiate or discuss the employees' working conditions. Mr. Herman was referred to Mr. Saul Cohen, the incoming president of the association. A discussion was held with Mr. Cohen by Mr. Herman about negotiations but to no avail. Letters, in evidence, were sent to the association and published in the local newspaper about the desire to negotiate. Mr. Lansburgh of the Sans Souci Hotel was a member of the Board of Directors of the association and was sent such a letter.

There is no doubt in the Court's mind that the plaintiff knew of the effort on Mr. Herman's part to discuss negotiations for such of plaintiff's employees as he represented.

There is no further doubt that the plaintiff was by his evasive tactics refusing to negotiate and did, in fact, refuse to negotiate.

On the 17th day of Aprii, Mr. Herman called Mr. Lansburgh at about 3:00 o'clock P.M. and asked him if he would negotiate and was informed that Mr. Lansburgh would have to talk with his partner. When told his answer would have to be given by 4:00 o'clock P.M. or picket lines would be established, Mr. Lansburgh could not or would not give an answer. Picket lines were started in Front of the Sans Souci Hotel at 6:00 o'clock A.M. on the 18th day of April, 1955, by representatives of the union.

A number of employees including union members refused to cross the picket lines established by the union. Later, some employees, not then members of the defendant union, joined the union or designated the union as their bargaining agent.

As has already been held by the lower Court and affirmed by the Supreme Court the picketing was peaceful. The placards displayed by the pickets had these words on them:

> "This hotel refused to negotiate with Hotel Employees Union, Local # 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach."

Subsequent to the walkout and on May 25, 1955, a strike vote

was held at three places designated by the union and a majority of those participating in the election voted to strike. The union contends and there is no testimony presented in contradiction thereof that those voting constituted a majority of the employees, as of the 17th day of April, 1955, of the plaintiff within the jurisdiction of the union.

These facts, with one exception follow closely those facts outlined in Johnson v. White Swan Laundry, cited in 41 So. (2d) 874 and also in Moore v. City Cleaners and Dyers, 41 So. (2d) 865.

The one exception is the strike vote in the Johnson and Whitehead cases had been held before the strike and which the Supreme Court in the Moore case, supra, said it was not necessary if it were to signal or announce a strike. The Court finds that it is immaterial.

If it should be decided otherwise, then the question would arise as to whether or not Section 447.09 F.S.A. paragraph (3), which says:

> "To participate in any strike, walkout, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition."

is constitutional and valid. Its validity has been challenged by the defendant and if justice is to be done the validity of the act should be determined.

This particular paragraph of a similar act in Texas and Kansas has been held unconstitutional.

In International Union of Operating Engineers, Local No. 546, et al. v. Cox, reported in 219 SW (2d), page 787, the Supreme Court of Texas said:

> "Under the plain mandate of the above Federal decisions, we must necessarily hold that the Legislature of this State cannot deprive our citizens of the right of peaceful picketing by narrowly defining a 'labor dispute' as a controversy between an employer and not less than a majority of his employees. American Federation of Labor v. Bain, 165 Or. 183, 106 P. 2d 544, 130 A.L.R. 1278. To so restrict the

term would deny to the minority valuable rights guaranteed by the Constitution, and by reason of the definitions given by the Statute to 'secondary strikes' 'secondary picketing' and 'secondary boycott', those minorities would be subjected to the penalties and liabilities provided in the statute if they sought to publicize their grievances. However, it should not be understood that the states are without authority to enact reasonable regulations for picketing so long as these regulations do not deprive the citizen of his fundamental rights. It cannot be doubted that under the police power the states may impose certain reasonable restrictions even upon peaceful picketing provided they are not destructive of the right to publicize a labor difficulty. They may reasonably regulate the number of pickets, the conduct and demeanor of such persons, the terminology of the placards used in informing the public of the facts of the controversy, and reasonably define the dispute which may justify the activity. That is clearly indicated in the Thornhill case wherein the Supreme Court was careful to point out that the statute there condemned 'leaves room for no exceptions based upon either the number of persons engaged in the proscribed activity, the peaceful character of their demeanor, the nature of their dispute with an employer, or the restrained character and the accurateness of the terminology used in notifying the public of the facts of the dispute.' (310 U.S. 88, 60 S.Ct. 743).

"The fundamental constitutional right which the Supreme Court of the United States upheld in the above decisions was declared to be secured to 'every person.' Thus there is no escape from the conclusion that the denial of such right to the members of the minority is no less an unconstitutional abridgment of the right simply because it is saved to the majority. On what theory may the distinction be justified? Does one lose his constitutional guarantee merely because he aligns himself with the minority group? Are rights less sacred to a small group than they are to the multitude? Was not one of the dominant purposes of the Constitution to protect minorities from the unlawful and avaricious encroachments of majorities? Surely the framers of our Constitution had

no thought that rights guaranteed to the many should be denied to the few.

"As reluctant as we are to declare acts of our legislature unconstitutional, it becomes our duty to declare invalid that portion of the statute involved which seeks to restrict a 'labor dispute' to a controversy between an employer and a majority of his employees."

In Stapleton v. Mitchell reported in 60 Fed. Supple. at page 51, a group of union officials brought an action which had as its object the determination of the validity and constitutionality of a Kansas law similar to our Florida law above quoted.

The case was heard by a three judge Court as provided under the Federal law and the Court held the act unconstitutional. The decision was appealed to the Supreme Court but dismissed on stipulation.

In the opinion rendered in that case the Court said:

"The right to peaceably strike or to participate in one, to work or refuse to work, and to choose the terms and conditions under which one will work, like the right to make a speech, are fundamental human liberties which the state may not condition or abridge in the absence of grave and immediate danger to the community. But by Section 9(3)(12)(13), the State of Kansas has not only conditioned these rights, but expressly prohibited them and made their exercise a criminal offense. In this setting we think it is the inherent prohibitions of the statute standing alone which impose the unconstitutional restraint, and those against whom the statute is plainly directed should not be required to abide the processes of criminal justice in order to obtain the redress to which they are entitled under the Federal Constitution."

This Court is, therefore, of the opinion that paragraph (3) of Section 447.09 F.S.A. is unconstitutional and invalid.

The Supreme Court of Florida in its opinion filed May 27, 1955, said:

"In order for such picketing to be lawful, the Union must establish that the employees have chosen the (Union) as their representative."

Third Phase—Trial Court Orders—Sans Souci

The Court finds this has been done and that the union was chosen as the bargaining representative by certain employees prior to the date of picketing.

The Superme Court further said:

> "The labor Organization must also inform the employer of the object to be accomplished by the picketing . . ."

The Supreme Court of Florida in Hotel & Restaurant Employees and Bartenders Union v. Cothron cited in 59 So. (2d), page 366, the following:

> "It appears that the Chancellor either misconstrued or misapplied the law to the facts as he found them in entering the injunction. The Chancellor stated that 'Complainants should have been advised of the reasons for the impending picketing and given an opportunity to remedy the cause as they saw fit.' This was no reason to grant an injunction in this case. There is no rule, regulation, or law of this State which requires a notice to the employer of the reasons for an impending strike, as a prerequisite to picketing, and the Courts are without power to supply such rule, regulation or law. The advisability or necessity for such is for legislative determination and not for the courts."

However, as cited above, there is no doubt in the Court's mind that the plaintiff knew that the union desired to negotiate and that the negotiations were to be about wages, hours and working conditions of its employees who were represented by the union.

The Supreme Court of Florida in its opinion of May 27, 1955, further said:

> "and afford to the employer a fair opportunity to engage in negotiations."

This Court finds that if the Supreme Court recedes from its ruling in the Cothron case, supra, that the plaintiff knew of the union's desire to negotiate long before the pickets were established but by the plaintiff's evasive and stalling tactics did not intend to negotiate and refused to do so.

It is, therefore, ORDERED, ADJUDGED AND DECREED

that the motion to vacate and dissolve the injunction is granted and the injunctive order heretofore entered in said cause is dissolved, vacated and set aside.

It is further ORDERED, ADJUDGED AND DECREED that the objections are overruled on all matters upon which ruling was reserved during the hearings.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 17th day of June, 1955.

J. FRITZ GORDON
Circuit Judge

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180677

THOMAS JEFFERSON, INC., A FLORIDA CORPORATION,

Plaintiff

vs.

HOTEL EMPLOYEES UNION, LOCAL 255 (AFL), DAVID HERMAN, AS DIRECTOR OF ORGANIZATION OF SAID LOCAL, CLARENCE L. SMITH, ALBERT H. BERLIN AND HENRY K. MISCHEL, INDIVIDUALLY AND AS BUSINESS OFFICERS AND AGENTS OF SAID LOCAL,

Defendants

ORDER OF THE COURT

THIS CAUSE came on to be heard July 7, 1955 upon the issues framed by the Bill of Complaint, the Answer and Supplemental Answer, and the Court heard all testimony offered by the respective parties and extensive argument pro et con, and the Court being otherwise fully advised in the premises, makes and enters the following findings and orders:

1. The allegations of the Supplemental Answer alleging interstate commerce and averring that this Court does not have jurisdiction were not supported by evidence. This Court has jurisdiction of the parties and the subject matter.

2. This court further finds from the sworn pleadings and the testimony of the witnesses for the respective parties that both parties have expressed a willingness to negotiate concerning the matters usually and normally attendant upon labor-management relations, and that the sole difficulty appears to lie in the fact that the plaintiff is not convinced that the defendant Union does in fact represent its employees. The defendant has produced its records showing it has been designated as bargaining agent for 47 employees at the San Marino Hotel, while the plaintiff, on the other

hand, has submitted a list of names which it represents as being the employees of the hotel, and alleges that only 3 of its recognized employees have designated the defendant Union as their bargaining agent. Although this cause came on for final hearing by consent of the parties, there was not enough evidence produced by either side to determine this easily ascertainable fact.

This Court has the authority to appoint a Commissioner to determine this fact by examining the plaintiff's payroll records and inquiring by proper means into the status of said employees as to union membership, and the free choice of such Union members as to their representation by defendant union. It is therefore

ORDERED, ADJUDGED and DECREED as follows:

1. Picketing at the San Marino Hotel shall be and the same is hereby enjoined until further Order of this Court.

2. The plaintiff shall forthwith make full and complete showing to the Commissioner hereinafter named in this Order, of all payroll records revealing a true and correct list of all of its employees, as of June 15, 1955, the date said picketing commenced; who come within the jurisdiction of Hotel Employees Union Local No. 255; in accordance with the Stipulation entered into in open court on July 7, 1955, by counsel for the respective parties.

3. The Commissioner hereinafter named shall, for the sole purpose of ascertaining the foregoing facts for the benefit of this Court, within 30 days from the date of this Order, cause an election by secret ballot to be held of the employees of plaintiff as of June 15, 1955, who come within the jurisdiction of the defendant Union, to determine the free choice of said employees as to their representation by defendant Union in the matter of labor-management relations; said secret ballot to be conducted at such place and time and in such manner and form as to the said Commissioner may seem appropriate and reasonable, the expense thereof to be taxed as part of the costs in this case.

4. The parties hereto are each respectively enjoined from in anywise coercing or intimidating the aforesaid employees of the plaintiff, by threats of any kind or by any act or means deterring or interfering with the free choice of the said employees to vote either for or against the designation of the defendant Union as the bargaining agent for the employees of said hotel.

Third Phase—Trial Court Orders—San Marino

5. The Court finds there is no strike at the San Marino Hotel, and the parties are hereby restrained and enjoined from falsely publicizing the alleged existence of a strike at plaintiff's hotel in publications that are published either in this jurisdiction or elsewhere.

6. The Honorable Joe Eaton, a former Judge of this Court, is hereby appointed as Commissioner of this Court for the purpose of ascertaining the names of those employees of the Plaintiff as of June 15, 1955, who are within the classification of employees over which the defendant Union assumes to assert jurisdiction; and to conduct the election by secret ballot as aforesaid, and thereafter report back to this Court with all convenient speed.

DONE and ORDERED in Chambers at Miami, Florida, this 11 day of July, A.D. 1955.

WILLIAM A. HERIN
Circuit Judge

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY. No. 180588-I

R. S. LEVY: DANIEL LIFTER: AND J. J. LANSBURGH, AS TRUSTEE FOR THE ELLEN LANSBURGH TRUST, THE MORRIS LANSBURGH, JR. TRUST AND THE LEONARD LANSBURGH TRUST,

Plaintiffs

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, OF THE AMERICAN FEDERATION OF LABOR, AND DAVID HERMAN, CLARENCE L. SMITH, ALBERT H. BERLIN AND HENRY K. MICHEL, INDIVIDUALLY AND AS BUSINESS AGENTS AND OFFICERS THEREOF,

Defendants

ORDER DENYING TEMPORARY INJUNCTION

This cause came on to be heard September 16, 1955, upon Plaintiff's application for Temporary Restraining Order prohibiting the picketing of Plaintiff's hotel, the Versailles. This picketing has been in progress since June 11, 1955. Affidavits were submitted by the respective parties and the cause argued at length. The Court being thereby and otherwise fully informed in the premise finds that the picketing has at all times been peacefully conducted and for the lawful purpose of inducing the employer to recognize and negotiate with the Defendant's Union as the representative of such employees as are members of Defendant union. I find further that the union established that a majority of the employees had chosen it as their representative and that the labor organization had also informed the employer of the object to be accomplished by the picketing and that a fair opportunity was afforded to the employer to engage in negotiations; wherefore it is

Third Phase—Trial Court Orders—Versailles

ORDERED, ADJUDGED AND DECREED that the application for Temporary Restraining Order be and the same is hereby denied.

Done and Ordered in Chambers, Miami, Florida, this 22 day of September, 1955.

ROBERT L. FLOYD

Fourth Phase—The Boca Raton Opinion

IN THE SUPREME COURT OF FLORIDA

JUNE TERM, A. D. 1955, EN BANC.

CASE No. 26,197

BOCA RATON CLUB, INC., A FLORIDA CORPORATION, AND HILDEMART CORPORATION, A FLORIDA CORPORATION,

Petitioners

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents

* * * * * * *

CASE No. 26,200

LEEVLANS CORPORATION,

Petitioner

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents

* * * *

(Captions of other cases omitted)

Opinion filed October 19, 1955.

WRITS OF CERTIORARI TO THE CIRCUIT COURT OF DADE COUNTY, ROBERT L. FLOYD AND GRADY L. CRAWFORD, JUDGES.

HOBSON, J.:

In *Sax Enterprises* v. *Hotel Employees Union Local No. 255*, 80 So. 2d 602, we decided a prior aspect of the matter which the cases now under consideration bring before this court. In the *Sax*

case we held on the basis of the showing made that it was error to deny a temporary restraining order against the picketing of the Saxony Hotel. The injunctive relief which was granted as a result of our mandates in the *Sax* case and in the instant cases related to picketing and the publicity measures used by the defendant-respondent union in connection therewith. Subsequently defensive pleadings were filed and further testimony taken upon motions of the respondents to dissolve and vacate the temporary injunctions issued pursuant to the mandates of this court. The chancellors below have issued orders of identical effect in all of these cases, granting the motions and dissolving and vacating the temporary injunctions.

Although the parties have attempted to present a multitude of issues in these cases, we are of the view that the only issues really involved are whether (1) the respondent union complied with the prerequisites to lawful picketing outlined in our opinion in the *Sax* case, supra, and (2) whether the picketing was for a lawful or unlawful purpose.

The chancellors found in substance that before the picketing commenced, the union did in fact represent some of the employees although less than a majority; that the union informed the petitioners of its desire to engage in negotiations, and that the petitioners used evasive tactics amounting to a refusal to negotiate or bargain. No one of the chancellors, however, made a finding that the union had, prior to the picketing, established by evidence of substantial character that any of the employees had chosen it as their representative.

Respondents contend that: the findings which were made are supported by competent substantial evidence; such findings in effect established the truth of the message contained in the cards which were displayed by the pickets, and which we reproduced in the *Sax* case, supra; the matter thus resolves itself into a situation where peaceful picketing has been carried on with the objective of accurately publishing the facts of a labor dispute, which is a lawful purpose within the doctrine of *Whitehead* v. *Miami Laundry Co.*, Fla., 36 So. 2d 382, and *Johnson* v. *White Swan Laundry, Inc.*, 41 So. 2d 874.

Petitioners take the position that the respondent union failed to

prove compliance with the prerequisite to lawful picketing set forth in the *Sax* opinion, of establishing "that the employees have chosen it as their representative."

In our opinion in the *Sax* case we said:

> "Without doubt a labor organization has the right to engage in peaceful picketing of an employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union as the representative of such employer's employees. In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative, Treasure, Inc., v. Hotel & Restaurant Employees and Bartenders' Union, supra, and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations. See North East Texas Motor Lines, Inc. v. Dickson, 148 Tex. 35, 219 S.W. 2d. 795."

Respondents say that the above pronouncements were nothing more than obiter dicta and that in any event they run counter to the established law of this jurisdiction. They cite our opinion in *Hotel & Restaurant Employees' & Bartenders' Union Local No. 156, A. F. of L.* v. *Cothron, et al,* 59 So. 2d 366, from which we quote:

> "It appears that the Chancellor either misconstrued or misapplied the law to the facts as he found them in entering the injunction. The Chancellor stated that 'Complainants should have been advised of the reasons for the impending picketing and given an opportunity to remedy the cause as they saw fit.' This was no reason to grant an injunction in this case. There is no rule, regulation, or law of this State which requires a notice to the employer of the reasons for an impending strike, as a prerequisite to picketing, and the Courts are without power to supply such rule, regulation or law. The advisability or necessity for such is for legislative determination and not for the courts."

We face this contention of respondents forthrightly. Our opinion in the *Cothron* case does indeed appear to be contrary to our state-

ment in the *Sax* case, supra, to the effect that as a prerequisite to lawful picketing "the labor organization must also inform the employer of the object to be accomplished by the picketing". It might be said that the underlying reason for our ruling in the *Cothron* case is a sound basis for recanting our pronouncement as to the other two prerequisites to lawful picketing outlined in the *Sax* opinion. We have given careful consideration to the apparent conflict between these two cases and have concluded that although there may exist "no rule, regulation or law of this State which requires" the foregoing prerequisites to lawful picketing, certainly honesty of purpose, fair dealing and a sound public policy demand them. Moreover, Sec. 447.03, F.S., grants unto *employees* the right to "*self*-organization" (Italics supplied) and "to bargain *collectively* through representatives of *their own choosing*" (Italics supplied). It seems clear that before being required to enter into negotiations with an alleged bargaining agent an employer should be shown by evidence of substantial character that his employees, or at least some of them, have voluntarily exercised the rights accorded them by our statute. Hence we deem it appropriate for the courts to fix reasonable and fair prerequisites to the end that, rather than economic strife, there may exist peaceful accord of labor disputes so necessary in the interest of the common weal.

The placards displayed by the pickets carried the following words: "This hotel refused to negotiate with Hotel Employees Union, Local No. 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach". This language unquestionably connotes to the "common mind" a compliance with all prerequisites to lawful picketing, i.e., a pre-existing honest and forthright attempt to bring about negotiations between an authorized bargaining agent and the employer because of a bona fide labor dispute between employee and employer and a fair opportunity to engage in negotiations. It is clear that such an opportunity cannot be said to exist until and unless the employer is first assured by evidence of substantial character that if he negotiates he will do so with an authorized bargaining agent. The words on the placards "refused to negotiate" necessarily presuppose an opportunity to negotiate. Surely no one can doubt that such opportunity should be a "fair" opportunity. The placards did not speak the truth

in all its stark significance or give to the public actual facts concerning a labor dispute. Indeed, so far as this record shows petitioners, except for the uncorroborated representations of a putative bargaining agent, never, prior to the most recent hearing in the circuit court, knew as a matter of fact that their employees were actually dissatisfied and had, because of such dissatisfaction, designated the respondent as their bargaining agent. It follows, as night the day, that without such knowledge they could not know that a labor dispute existed nor, indeed, would a labor dispute normally come into being without some dissatisfaction on the part of the employees. No dispute of any kind or character can exist unless the parties said to be involved know that there is actually disagreement between them.

Moreover, it is the duty of the employer to treat only with the employees' true representative and the unsupported statement of a labor organizer is an insufficient showing to justify the employer in dealing with the alleged bargaining agent. In *Texarkana Bus Co.* v. *National Labor Relations Board,* 119 F. 2d 480, the court stated, and we quote with approval:

> "The employer can not be required to devote his time to negotiating with every individual claiming to represent a bargaining unit, and can not be charged with unfair practice in this regard unless there is presented to him evidence of a substantial character showing that the representative is in fact an authorized bargaining agency."

Although the court was there dealing with the National Labor Relations Act which *does not* "require an employer to bargain collectively with a union which has not been designated by a *majority* of the employees in an appropriate unit" (italics supplied), nevertheless the rationale of the opinion in that case is equally applicable here. This is so because there is no rule, regulation or law of this State of which we are cognizant which requires an employer to bargain collectively with a union which has not been designated by at least *some* of the employees in an appropriate unit. The Circuit Court of Appeals of the Eighth Circuit in the last cited case said, and we again quote with approval:

> "As the employer must act at his peril in recognizing a

representative, common prudence dictates that he refrain from acting until satisfactory proof is produced that the representative in fact speaks for a majority of the employees." 119 F. 2d 480, 484.

It is deemed appropriate to observe that we have outlined *prerequisites* to lawful picketing and it is not sufficient to establish, even in court, after picketing is a reality that the putative bargaining agent had in fact, prior to picketing, been so designated by an insignificant number or, for that matter, a majority of the employer's employees.

We hold herein that as prerequisites to lawful picketing the union must establish by some evidence of substantial character that at least some of the employees have chosen it as their representative and "afford to the employer a fair opportunity to engage in negotiations", any pronouncement in the *Cothron* case to the contrary notwithstanding. We might add that we deem it necessary in order to afford to the employer a fair opportunity to engage in negotiations that the labor organization inform the employer of the subjects intended for negotiation.

The picketing of petitioners' places of business by the respondent union under the facts and circumstances of these cases and upon the basis that petitioners refused to negotiate with the union is the unlawful use of economic pressure to coerce the petitioners into negotiations with an alleged agent who failed and r fused as required by law and just dealing timely and appropriately to establish his authority. Hence the picketing is for an unlawful purpose.

Respondents, however, say the petitioners knew that certain organizers, particularly the respondent Mr. David Herman, had attempted to persuade the employees to designate respondent union as their bargaining agent or to join the union, as is evidenced by the fact that the employers endeavored to dissuade the employees from taking either action. Such circumstance falls far short of establishing as a matter of fact that the employees had pursued either course and it assuredly does not prove that the employers knew that the employees, or any of them, had actually so designated the union or had joined it.

This record paints a picture not of employees exercising their right to "self-organization" or their right to "bargain collectively

through representatives of their own choosing" but, on the contrary, limns one of two labor organizers coming to Miami Beach early this year, organizing a local labor union, and attempting for a period of two to three months, as they had every right to do, to persuade petitioners' employees that they were not being treated fairly in the matter of hours, wages and conditions of work, and that they should therefore designate the union as their bargaining agent or join the union or do both. After failing to so persuade no more than an insignificant number of such employees that they were being treated unfairly, as is established by the designation cards introduced in evidence, they immediately resorted to the use of the coercive effect of picketing without either of them first establishing by any evidence substantial in character that the respondent union in truth and in fact had been designated as the bargaining agent of any employees of the petitioner. Thereafter these men, who cannot be said to have given the employers a fair opportunity to negotiate since they gave said employers no substantial evidence of the union's authority to represent any of the employees, arranged for and had the picket lines thrown up for the obvious purpose of forcing the employers to cause their employees to designate the union as their bargaining agent and perhaps to join the union. That picketing carried on under such circumstances is unlawful cannot be gainsaid. It falls within the "unlawful purpose" doctrine of *Miami Typographical Union* v. *Ormerod,* 61 So. 2d 753.

We hold that the picketing in these cases was begun by respondents without first having submitted to the petitioners competent substantial evidence of their authority as alleged bargaining agents, which caused the picketing to be unlawful, and that the picketing was carried on for an unlawful purpose.

It follows that the petitions for certiorari should be granted and the challenged orders quashed.

It is so ordered.

DREW, C. J., TERRELL AND SEBRING, J. J., CONCUR.

Fourth Phase—Versailles Opinion

IN THE SUPREME COURT OF FLORIDA

JUNE TERM, A. D. 1955, SPECIAL DIVISION A.

CASE NO. 26,798

R. S. LEVY: DANIEL LIFTER: AND J. J. LANSBURGH AS TRUSTEE FOR THE ELLEN LANSBURGH TRUST, THE MORRIS LANSBURGH, JR. TRUST, AND THE LEONARD LANSBURGH TRUST,

Petitioners,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, OF THE AMERICAN FEDERATION OF LABOR, AND DAVID HERMAN, CLARENCE L. SMITH, ALBERT H. BERLIN AND HENRY K. MICHEL, INDIVIDUALLY AND AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents.

Opinion filed December 14, 1955.

A WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR DADE COUNTY, ROBERT L. FLOYD, JUDGE.

PER CURIAM.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the Circuit Court for Dade County in said cause bearing date September 22nd, 1955, denying petitioner's prayer for temporary restraining order against the respondents and the same having been considered, it is ordered that Writ of Certiorari be and is hereby awarded and the said order is reversed with directions to enter the injunction order prayed for on authority of Boca Raton Club, Inc. et al. vs. Hotel Employees Union Local No. 255, (A. F. of L.) et al., 83 So. 2d 11 (Fla.).

DREW, C. J., TERRELL, ROBERTS and O'CONNELL, JJ., CONCUR.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1956, SPECIAL DIVISION B.

CASE No. 26,880

THOMAS JEFFERSON, INC., A FLORIDA CORPORATION,
Petitioner

vs.

HOTEL EMPLOYEES UNION, LOCAL 255 (AFL), DAVID HERMAN, AS DIRECTOR OF ORGANIZATION OF SAID LOCAL, CLARENCE L. SMITH, ALBERT H. BERLIN AND HENRY K. MISCHEL, INDIVIDUALLY AND AS BUSINESS OFFICERS AND AGENTS OF SAID LOCAL,
Respondents

Opinion filed January 13, 1956.

A WRIT OF CERTIORARI TO THE CIRCUIT COURT FOR DADE COUNTY, WILLIAM A. HERIN, JUDGE.

THORNAL, J.:

Petitioner, which is the owner of a Miami Beach Hotel named the San Marino, seeks reversal of a portion of an interlocutory order of the Chancellor appointing a commissioner to hold an election of hotel employees to ascertain whether respondent Union is the designated bargaining agent of the employees.

This case is another in a series of cases resulting from the picketing of Miami Beach hotels. See Sax Enterprises v. Hotel Employees Union Local No. 255 (A. F. of L.), Fla. 1955, 80 So. 2d 602; Boca Raton Club, Inc. v. Hotel Employees Union, Local No. 255 (A. F. of L.), Fla. 1955, 80 So. 2d 680. Typical of the other cases, petitioner filed its complaint against the respondents seeking an injunction against picketing activities of the respondents, alleging that the picketing was done for an unlawful purpose, to-wit, to compel non-union employees to join the union and desig-

nate it as their bargaining agent in dealing with the employer hotel. Picketing started on June 15, 1955, and this is the crucial date to bear in mind. The Chancellor entered an interlocutory order enjoining picketing at the San Marino Hotel until further order of the court. The whole problem revolves around the factual determination as to whether the respondent union actually in fact represents the employees of the petitioner hotel.

The Chancellor found that he could not determine the existence or non-existence of this fact from the evidence before him and by his order appointed a commissioner "for the sole purpose of ascertaining the foregoing facts (whether the union was the designated bargaining agent of the hotel employees) for the benefit of this Court, within 30 days from the date of this Order (to) cause an election by secret ballot to be held by the employees of plaintiff as of June 15, 1955, who come within the jurisdiction of the defendant Union, to determine the free choice of said employees as to their representation by defendant Union in the matter of labor-management relations; . . ."

By petition for writ of certiorari the Hotel challenges the correctness of that portion of the order appointing a commissioner to hold a secret election. Our examination of the record and exhibits shows that according to petitioner's exhibit 13, the hotel had 29 employees on June 15, 1955, that of these 29 employees, 20 were in the classification served by the respondent union, to-wit, bellmen, elevator operators, housekeepers, maids, housemen. The Union admits that it does not serve employees such as bookkeepers, typists and management employees. Respondents' Exhibit A consists of 28 so-called "white cards" signed by various individuals designating the respondent Union as its bargaining agent. Exhibit A also includes 20 so-called "yellow cards" signed by various individuals designating the "Miami Hotel Trades Council," allegedly consisting of affiliates of the American Federation of Labor, as their bargaining agent. A careful comparison of the names appearing on the 48 cards constituting Exhibit A shows that they include only 3 of the names of petitioner's employees who would be served by the respondent Union appearing on plaintiff-petitioner's Exhibit 13.

In our opinion in Sax Enterprises v. Hotel Employees Union Local No. 255 (A. F. of L.), 80 So. 2d 602, we held:

> "Without doubt a labor organization has the right to engage in peaceful picketing of an employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union as the representative of such employer's employees. *In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative,* Treasure, Inc., v. Hotel & Restaurant Employees and Bartenders' Union, supra, *and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations.* See North East Texas Motor Lines, Inc., v. Dickson, 148 Tex. 35, 219 S.W. 2d 795." (Emphasis ours.)

In the matter now before us the petitioner who sought the injunction below brought in a list of its employees as of the date the picketing started, identified them according to the nature of their employment and showed that only 3 of them had designated the respondent as their representative. This shifted to the respondent the burden of going forward with the evidence to establish that it was in fact the authorized representative of the employees of the petitioner in order to justify the respondent in demanding that the petitioner bargaining with it as the labor-management representative of the employees. In order to carry this burden the respondents then produced the 48 cards identified as Respondents' Exhibit A and these cards show that only 3 of the employees named by petitioner are affiliated with the respondent Union, according to respondent's own exhibit. Each party doubts the other's records but on this appeal neither party has cited to this court any authority for the appointment of a commissioner to hold an extra-legal secret ballot in order to produce evidence for the consideration of the court in a matter pending in litigation before it.

It was the responsibility of the litigants to produce the evidence sufficient to enable the court to arrive at a proper judgment. *If there is any doubt about the accurateness or authenticity of the*

list of employees produced in evidence below by the petitioner as its Exhibit 13, it would have been a very simple matter to have subpoenaed its payroll records and ascertain the facts from the original. The procedure that was followed, to-wit, the appointment of a commissioner to hold a so-called secret election so far as we can determine has no precedent either in labor management litigation or for that matter within the traditional equity procedures heretofore recognized by this or any other court. No precedent has been cited by either party to this appeal. Such procedure obviously deprives both parties of the established right of cross-examination and the confronting of witnesses as well as the compelling of witnesses to testify under oath. *If the Chancellor desires further evidence, certainly the rules make available to him appropriate processes for obtaining it either by the compulsion of the appearance of witnesses before him together with the subpoenaing of exhibits or by the reference of the matter to a Master to hear the testimony under oath in the presence of opposing counsel and parties who then have the right of cross-examination.* Respondent's claim for the desirability of secrecy to protect the Union members against alleged "black-listing" loses vitality when we note that respondents themselves have actually filed in this cause membership cards signed by their alleged members.

If the facts have occurred since the filing of the complaint which were not included in the original pleadings and which constitute additional grounds either for complaint or as defenses to the complaint, our present rules make adequate provision for an orderly procedure to bring these matters to the attention of the Chancellor. The record in this case at least indicates grounds for suspicion that all parties involved were sparring around in an effort to gain some tactical advantage rather than a straight-forward procedural effort to enable the able Chancellor to arrive at the right and truth of the situation that they presented to him by their pleadings. The parties should present their own case and they should not impose upon the Chancellor the burden of presenting it for them.

It appears to us that in the series of cases involving this particular problem which has already been heard by this court on several occasions, the rules governing the presentation and disposition of

the litigation have been adequately and clearly set forth and we can frankly find no justification for the continuation of tactics which can only result in delay and ultimate harm to *all parties concerned*, including the public which we judicially know has a vital interest in the Miami Beach hotel industry.

The decree is approved insofar as it provides "picketing at the San Marino Hotel shall be and the same is hereby enjoined until further order of this Court."

In other respects the petition for certiorari is granted, the decree appealed from is quashed, and the cause is remanded for further proceedings consistent with this opinion.

DREW, C. J., TERRELL AND ROBERTS, JJ., CONCUR

CRAWFORD, ASSOCIATE JUSTICE, heard the oral argument but did not participate in opinion or judgment.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957 EN BANC

CASE NO. 28,074

FONTAINEBLEAU HOTEL CORP., A FLORIDA CORPORATION,

Petitioner

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND CLARENCE L. SMITH, ALBERT H. BERLIN AND HENRY K. MICHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents

Opinion filed February 1, 1957.

A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF DADE COUNTY, WILLIAM A. HERIN, JUDGE.

TERRELL, C. J.

December 21, 1955, petitioner filed a sworn petition in the Circuit Court of Dade County on the basis of which temporary restraining order was directed to respondents commanding them to desist from picketing the Fontainebleau Hotel. January 30, 1956, after answer of defendents was filed, the cause came on for hearing before the chancellor; evidence was taken and the temporary restraining order was dissolved. We are confronted with a petition for certiorari to review and quash the order dissolving the temporary injunction.

Petitioner first contends that respondents did not represent its employees, that petitioner was not notified of any labor grievance prior to the picketing, nor was it given the object to be accomplished by the picketing or a reasonable time to accept or reject the union demands.

Sections 447.01 (1) (2), 447.03 and 447.09 (3) (4) (11), Florida Statutes 1955, are relied upon to support petitioner's

grounds for relief. Section 447.01(1)(2) is a statement of policy with reference to the regulation of labor unions, their agents, employees and other representatives. Section 447.03 guarantees laborers the right to organize and join a union, to bargain collectively, including acts for mutual aid and protection. Section 447.09(3)(4)(11) preserves the right of franchise but makes it unlawful to participate in any strike, walkout or cessation of labor or continuation thereof unless authorized by a majority vote of the employees affected. It requires elections to strike or cease work to be by secret ballot. It is made unlawful to intimidate a workman or his family in the enjoyment of these rights, to picket his domicile or to injure his person, property or that of his employer or family. Collectively, these statutes require that all employer-employee relations be conducted decently and in order.

At the outset it is shown that the trial court was confused about what this court had in mind in Boca Raton Club v. Hotel Employees Union, Local No. 255 (A. F. of L.), 83 So. 2d 11, when it stated that the union, prior to strike, should show that it represented "at least some of the employees." The reason for the expression "at least some of the employees" was that in that case it was not shown that the union represented any of the employees prior to the strike. In the case last cited the court contrasted Florida requirements and those of the Federal law wherein a majority of those belonging to the union is required to precipitate a strike. The quoted expression was a mere expletive of the situation before the court and has no relevance to this case.

It is not amiss to point out that there are circumstances in which the right to picket is an aspect of freedom of speech and may not be infringed. A. F. of L. v. Swing, 312 U.S. 321; Whitehead v. Miami Laundry Co., 160 Fla. 667, 36 So. 2d 382, and others. In Sax Enterprises v. Hotel Employees Union, Local No. 255, Fla. 80 So. 2d 602, and in other cases, we have called attention to the law placing limitations on picketing by requiring that it be peaceful, that the union must show that it represents the employees, that the employer must have been told of the object to be accomplished by the picketing and afforded an opportunity to negotiate whatever differences there may be or impediments there are to accomplish the objective of the picketing.

Sixth Phase—Fontainebleau Opinion

At the trial and on appeal the law governing picketing and that governing the right to strike were confused. As to the latter, Section 447.09(3), Florida Statutes, as well as the Federal law, require that strike be approved by a majority vote of the employees to be governed thereby. No such requirement exists as to picketing. It cannot be initiated, however, for spite or for reasons other than to accomplish a lawful purpose and then the law, order and decency require that it be done in an atmosphere conducive to reaching a result that is fair to the employer, the employees and the public. If attempted in an atmosphere of violence, insinuation, bad faith, deception, farce or damned-if-I-don't-show-you spirit, it would not be recognized as a means of adjusting labor disputes. Satisfactory, fair or equitable judgments never emerge from such an atmosphere. Picketing conducted in such an environment, as we stated in Sax Enterprise v. Hotel Employees Union, Local No. 255, supra, is nothing more than a "species of coercion traveling under the guise of free speech for the purpose of enjoying constitutional immunity." It was widely at variance from the pattern confronting the court in A.F.L. v. Swing, supra.

The correspondence conducted between petitioner and respondents, as well as the evidence taken at the trial, exhibit bad faith, a lack of respect one for the other, a tense feeling between them and a disposition to haggle over the issues if there were any. We find little or no evidence to support the truth of the legend borne on the placard carried by the picketers, "This hotel unfair". Hotel Employees Union, Local 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach." For all the record shows, the placard was a misrepresentation and was unfair to the petitioner. There is showing of intimidation by representatives of respondents to impede petitioner's employees in going to work. The picket line was thrown up before there was showing of any lawful grievance against petitioner and the picketers are not shown to have refrained from abuse to patrons entering the hotel or laborers working there. There is showing that about 200 of the approximately 1,000 employees of the hotel signified the union as their bargaining agent prior to December 21, 1955, the day picketing started.

The correspondence between petitioner and respondents was

commenced November 30, 1955, and was concluded January 6, 1956. In sum it charges: (1) That the picket line was thrown up without any pre-existing honest or forthright attempt to bring about negotiations between an authorized bargaining agent and the employer because of a bona fide labor dispute existing between the parties. (2) The picket line was thrown up before affording any fair opportunity to engage in negotiations. (3) Prior to picketing it was not shown by evidence of substantial character that the union was the authorized bargaining agent of the employees. (4) Under the law of this state the employer is required to negotiate with the true representative of the employees and the unsupported statement of a labor organizer is an insufficient showing to justify the employer in dealing with the alleged bargaining agent. It is not sufficient to establish even in court, after picketing is a reality, that the putative bargaining agent had in fact, prior to picketing, been so designated by an insignificant number or for that matter a majority of the employees. Boca Raton Club, Inc. vs. Hotel Employees Union, Local No. 255, supra. (5) Prior to organizing a picket line, respondents failed to furnish evidence of substantial character that any employees had chosen it as their representative and offered the employer no opportunity to negotiate. (6) The employer has never been informed of the subject for negotiation, not only that, but respondents have attempted to coerce employer to participate in conduct prohibited by law. (7) Respondents do not represent the employees of the petitioner as their bargaining agent.

Respondents deny or evade these charges but the evidence supports most of them. The law of this state regulating picketing was designed to protect the laborers, the proprietors, and the public. All have a stake in the proper regulation of employer-employee relations. This court has in several cases discussed the prerequisites to good labor relations. Under the statute, Section 447.09(12)(13) and other provisions thereof, picketing contemplates a labor dispute; it should not be conducted beyond the area of the industry or business where the labor dispute arises; it should not be done by force or violence; nor should it be done in such a manner as to prevent ingress and egress to and from any premises and it must be done in a peaceful manner. If done in aid of a strike, walkout,

cessation of work or continuation thereof, it must be approved by a majority vote of the employees. Absent these requirements it is not necessary to determine at this time what percentage of the employees should participate in lawful picketing.

From a study of the record it is not conclusively shown that any bona fide labor dispute existed in petitioner's hotel. Only two of its employees participated in the picketing; in fact they did not know of the purpose of the picketing. It is not shown that there was any dissatisfaction with working or other conditions at the hotel. The record as a whole indicates that the picketing was precipitated by the union for the purpose of requiring both the petitioner and its employees to recognize it as the representative of said employees. It was accompanied by acts of violence or near violence condemned by the statute. The gravamen of the picketing is not shown to have originated within the confines of petitioner's hotel.

When a bona fide industrial grievance arises, legal and orderly picketing may be indulged in, but the law places limitations on it. It condemns violence, manhandling, the use of the club or the blackmariah. It provides an orderly process to conduct it and it contemplates that both parties will cooperate to bring about a solution advantageous to all concerned.

Nothing contained herein shall be construed as prohibiting any number of employees less than a majority from engaging as individuals (as distinguished from representatives of a labor union) in lawful picketing for the purpose of truthfully acquainting the public with their grievances, provided that prior thereto they shall have complied with the prerequisites to lawful picketing set forth in our opinion in Sax Enterprises vs. Hotel Employees Union Local No. 255, supra. In this opinion we are dealing exclusively with the right of a labor union which has been designated as the bargaining agent of less than a majority of employees of a given employer, and we hold merely that the union as such, and as distinguished from the individual employees, may not, under the circumstances presented here, engage in picketing by use of the members of the union as pickets who are not employees of the subject employer.

We are convinced that so much that the law requires as a pre-

requisite to picketing was ignored in this case that respondents are entitled to no relief at the hands of this or any court. It follows that certiorari should be, and is hereby, granted and the judgment appealed from is quashed.

It is so ordered.

HOBSON, DREW, THORNAL and O'CONNEL, JJ., CONCUR

THOMAS and ROBERTS, JJ., not participating.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957, DIVISION B.

CASE NO. 28,239

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al.,

Appellants.

vs.

SAX ENTERPRISES, INC.,

Appellee.

Opinion filed March 15, 1957.

AN APPEAL FROM THE CIRCUIT COURT FOR DADE COUNTY, CHARLES A. CARROLL, JUDGE.

PER CURIAM.

Affirmed on authority of Fontainebleau Hotel Corp. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., opinion filed February 1, 1957.

TERRELL, C. J. HOBSON, DREW and O'CONNELL, JJ., CONCUR.

(Per Curiam opinions identical, except for the caption, were issued on March 15, 1957, in each of the other three cases as to which review is here sought.)

APPENDIX B

ASSIGNMENTS OF ERROR

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

IN CHANCERY NO. ————

SAX ENTERPRISES, INC., A FLORIDA CORPORATION,

Plaintiff

—versus—

HOTEL EMPLOYEES UNION, LOCAL 255 (AFL) et al.,

Defendants

ASSIGNMENTS OF ERROR.

Come now the defendants by their undersigned solicitors and make the following assignments of error as the errors which they intend to rely upon in the Supreme Court of Florida, for a reversal of the Order (or Final Decree) made herein on the 30th day of November, 1955, and recorded in Chancery Order Book 1214, page 232, of the records of this Court, from which they have appealed.

1. The Court erred in enjoining the defendants in peaceful picketing the business place of the complainants, whereby your defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed within the meaning and scope of Sections I, XII, XIII, XVII and XIX, Declaration of Rights, Constitution of the State of Florida, and Amendments I, V, XIII and XIV of the Constitution of the United States of America.

2. The Court erred (in and by such final decree) in finding that the defendants should have established to the satisfaction of the employer, that the employees had chosen defendant Union as their representative and further requiring that the labor organization must also inform the employer of the object to be accomplished by picketing and afford an unwilling or hostile employer an unspecified waiting period within which to engage in negotiations, all as a prerequisite to the right to strike and picket, whereby your de-

fendants and the Union members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments I, V, XIII and XIV of the Constitution of the United States of America.

3. The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

5. The Court erred (in and by such final decree) in enjoining peaceful picketing and the dissemination of information of information predicated upon an unsubstantiated finding of fact, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

6. The Court erred in requiring a direct employer-employee relationship as a prerequisite to picketing and as a prerequisite to publicizing the existence of a labor dispute, contrary to Amendments I and XIV of the Constitution of the United States of America.

7. The Court erred (in and by such final decree) in permanently enjoining peaceful picketing and the publicizing of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefor, and beyond the scope of any finding of fact insubstantial or otherwise, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

8. The Court erred (in and by said final decree) in assessing costs against the defendants.

J. W. BROWN
GRAMLING & GRAMLING
Solicitors for Defendants
By *Carrington Gramling*

FILED
AUG 12 1957
JOHN T. FEY, Clerk

No. 396

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
HARRY LEVY, et al., doing business as SHERRY FRONTENAC HOTEL

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
STUYVESANT CORPORATION

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
ABE ALLENBERG, et al.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
A. H. S. CORPORATION

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
HOTEL DELMONICO, INC.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
SAUL COHEN, et al.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
MORRIS LANSBURGH AND DANIEL LIFTER

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
MARTINIQUE HOTEL, INC.

PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
HARRY LEVY, et al., doing business as SHERRY FRONTENAC HOTEL

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
STUYVESANT CORPORATION

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
ABE ALLENBERG, et al.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
A. H. S. CORPORATION

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
HOTEL DELMONICO, INC.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
SAUL COHEN, et al.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
MORRIS LANSBURGH AND DANIEL LIFTER

HOTEL EMPLOYEES UNION, LOCAL NO. 255, et al., *Petitioners*
v.
MARTINIQUE HOTEL, INC.

PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Hotel Employees Union, Local No. 255 (and David Herman, Clarence L. Smith, Albert H. Berlin, Henry K. Mischel, individually and as officers and agents of said Local) pray that a writ or writs of certiorari issue to review the judgments of the Supreme Court of Florida entered in the above-entitled cases on March 15, 1957.

OPINIONS BELOW

The opinions of the Circuit Court for Dade County in these cases are unreported. They are reprinted in the appendix hereto.

There were no opinions in the Supreme Court of Florida in these cases other than those discussed and set forth at length in the companion petition for certiorari filed this same day and styled *Hotel Employees Union* v. *Sax Enterprises, Inc., et al.* The opinions in these cases are as follows:

1) A *per curiam* order, in *Harry Levy, et al., d/b/a Sherry Frontenac Hotel* v. *Hotel Employees Union,* in conjunction with the Sans Souci case discussed in the *Sax* petition, directing the trial court to issue a temporary injunction. This is reported in 80 So. 2d 680 (1955) and reprinted in the appendix hereto;

2) An opinion in the same case, also issued in conjunction with the *San Souci* case but usually referred to as *Boca Raton Club, Inc.* v. *Hotel Employees Union,* quashing the trial court's order vacating the temporary injunction. This is reported in 83 So. 2d 11 (1955) and reprinted in the appendix hereto;

3) *Per curiam* opinions, identical in each case and reported in 93 So. 2d 583-600 (1957), affirming on the authority of *Fontainebleau Hotel Corp.* v. *Hotel Employees Union,* 92 So. 2d 415 (1957), the final injunctive orders issued by the trial court. One of such identical *per curiam* opinions is reprinted in the appendix hereto. The *Fontainebleau* opinion is reprinted in the appendix to the *Sax* petition.

JURISDICTION

The judgments of the Supreme Court of Florida in each of these cases were entered on March 15, 1957. On June 11, 1957, Mr. Justice Black ordered that the time for filing "petition or petitions for writ or writs of certiorari" be extended to and including August 12, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. §1257(3).

QUESTIONS PRESENTED

The questions presented here are identical with those presented in *Hotel Employees Union* v. *Sax.* They are:

1. Whether the Supreme Court of Florida may, consistently with the 14th Amendment as it has been applied by this Court to the prohibition of peaceful picketing, embark upon a course of decision plainly designed to prevent any picketing under any circumstances by employees engaged in an attempt to achieve union recognition and collective bargaining in the hotel industry.

2. Whether a state court may, consistently with the 14th Amendment, prohibit any publication whatsoever of the fact that a strike exists.

3. Whether Florida may, either by judicial action or by application of its statutory law, prohibit peaceful picketing, and thus regulate labor relations matters in an industry affecting commerce over which the National Labor Relations Board has refused to exercise jurisdiction.

4. Whether Florida may, under such circumstances, prohibit concerted action which is protected by Section 7 of the National Labor Relations Act.

5. Whether the Supreme Court of Florida, by repeatedly changing the rules governing peaceful picketing during the course of the litigation, deprived petitioners of due process of law in violation of the 14th Amendment.

STATUTES INVOLVED

Laws of Florida, 1943, No. 334, Ch. 21968, Fla. Stat. (1955) §§447.01-447.15, provides in pertinent part as follows:

> Section 1. **Policy.** (1) Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or nonunionist, must be protected. The right to work is the right to live.
>
> (2) It is here now declared to be the policy of the

State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner and to the extent hereafter set forth.

Section 3. **Employee Rights.** Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Section 9. **Prohibited Acts.** It shall be unlawful for any person:

. . . . . .

(3) To participate in any strike, walk-out, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in subsection (3) of this section without a secret ballot.

. . . . . .

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in Section 3 of this Act, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.

The relevant portions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., §151, *et seq.*) provide as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organiztaion, to form, join, or assist labor organizations, to bargain collectively through representatives of their

own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .

* * *

Prevention of Unfair Labor Practices

Sec. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise. Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

INTRODUCTORY STATEMENT

On March 15, 1957, the Supreme Court of Florida issued 22 identical opinions affirming final injunctions against all forms of picketing by the Hotel Employees Union at 22 different Miami and Miami Beach hotels, as well as prohibiting any publication of the existence of a strike at the hotels. Each of these opinions consisted of a single sentence —affirming the injunction on the authority of the Florida court's prior opinion in *Fontainbleau Hotel Corp.* v. *Hotel Employees Union,* Fla., 92 So. 2d 415 (1957).

In 9 of these 22 cases, the underlying dispute between the employer and the Union has been settled by the negotiation of a collective bargaining agreement. Review is being sought in this Court only with respect to 12 of the remaining cases. On June 11, 1957, Mr. Justice Black granted an application for extension of time in which to file a "petition or petitions" in each of these cases.

All of the cases were briefed together in the Florida Supreme Court as one case. The final opinion of the Florida Supreme Court in each case was identical. Rule 23(5) of the Rules of this Court would, therefore, permit the filing of a single petition for certiorari covering all the cases.

It is believed by counsel, however, that the presentation of all 12 cases in one petition for certiorari would be overly complex and confusing. There are 12 separate records; the findings of the trial courts are not identical in each case; in some of the cases there have been repeated reviews by the Florida Supreme Court of trial court actions on preliminary injunctions. In an effort to present the issues here to the Court in the least confusing manner counsel for petitioners have combined 4 of the 12 cases, pursuant to Rule 23(5), in the companion petition, filed this day, and entitled *Hotel Employees Union* v. *Sax Enterprises, Inc.*, et al. Those four, we believe, contain the significant opinions of the Florida Supreme Court (which spoke four times on the questions presented), adequately show the sequence and history of the litigation, and present the issues sought to be reviewed here in all of the cases. In the instant petition, covering the remaining eight cases, we shall rely on the factual framework and the reasons for granting the writ set forth in the *Sax* petition, specifying what we believe to be the relevant differences, if any. In our Statement of the Case we will treat each of the hotels separately with regard to facts, the manner in which the federal question was raised and preserved, and the separate court treatment.

For the sake of easy identification, and to minimize con-

fusion, the nine instant cases and their records will be referred to by the name of the hotel, or an abbreviation, as follows:

Name of Plaintiff	*Name of Hotel*	*Abbreviation*
Harry Levy, et al.	Sherry Frontenac	Front.
Stuyvesant Corporation	Lombardy	Lomb.
Abe Allenberg, et al.	Miami Colonial	Col.
A. H. S. Corporation	Nautilus	Naut.
Hotel Delmonico, Inc.	Delmonico	Del.
Saul Cohen, et al.	President Madison	Mad.
Morris Lansburgh & Daniel Lifter	Robert Richter	Rich.
Martinique Hotel, Inc.	Martinique	Mart.

STATEMENT OF THE CASE

The Sherry Frontenac

The Sherry Frontenac case is identical throughout with the *Sans Souci* case described in the companion petition filed this day. The complaint, which is substantially the same as in the Saxony and Sans Souci cases, was filed along with the complaints in those cases on April 18, 1955 (Front. R. 1-12). A combined hearing was held and, as in those cases, the trial court refused to issue a temporary injunction (Front. R. 15). The Saxony case then went on certiorari to the Supreme Court. On June 1, 1955, after the Supreme Court issued its Saxony opinion, it issued a combined *per curiam* covering six cases, including this case and Sans Souci, reversing the lower court on the basis of Saxony and directing it to issue an injunction. (Font. R. 57).

An injunction was issued in the broad form used in the Saxony and Sans Souci cases. Then, as in Sans Souci, the trial court heard testimony on a motion to vacate and vacated the injunction. In its order the court made specific findings that the employer hotel was engaged in a "cat and

mouse" game "as the weapon to be used by plaintiffs with the ultimate hope that the Union's representatives would tire of playing and finally look elsewhere for recreation. This the Union refused to do, however, and the picket line was the result." (Front. R. 37-38).

The Florida Supreme Court again reversed, as part of the Boca Raton-Sans Souci opinion (Front. R. 75-83), and the case went to its final conclusion in the same manner as the Sans Souci case.

The federal questions relied upon were raised and preserved exactly as in the Sax and Sans Souci cases. Following the issuance of the injunction the union filed its answer and supplemental answer squarely raising the free speech questions and the pre-emption question (Front. R. 24, 27-28, 89-91). In lieu of further testimony, the parties stipulated as to the presentation, via affidavit, of evidence as to the effect of the hotel's operations on interstate commerce (Front. R. 94-96). This evidence was rejected by the trial court as immaterial and irrelevant (Front. R. 98). The union's assignment of errors to the Florida Supreme Court squarely raised as error violation of rights guaranteed by the 1st and 14th Amendments to the U. S. Constitution as well as the error in refusing to acknowledge the absence of state court jurisdiction under the National Labor Relations Act. A copy of the assignment of error is attached hereto in the appendix and is substantially identical to the assignments of errors filed in all eight of the instant cases. Joint briefs for all of the hotel cases, including the eight instant cases, were filed with the Florida Supreme Court on final hearing, copies of which briefs are made a part of the Sax Record, pages 426-547. Those briefs clearly show that issue was squarely joined as to lack of the Federal questions raised herein.

The Lombardy Hotel

All of the succeeding cases, including the Lombardy, were begun in what we have called the "third phase"—after the

Supreme Court's opinion in the Saxony case. The preliminary injunction in Lombardy, which was issued June 2, 1955, was not in the broad form of the other cases but restricts only picketing of the hotel premises (Lomb. R. 104-05). The testimony makes it clear that the Union had sought to comply with the Sax order, and there is no evidence of any coercion or violence (Lomb. R. 23-46). The temporary injunction was made final in the fifth phase (Lomb. R. 117) and the Florida Supreme Court affirmed *per curiam*. (Lomb. R. 126). The federal questions relied upon were raised and preserved exactly as in the Sherry Frontenac case (Lomb. R. 15, 107-09, 112-14, 119-21).

The Miami Colonial Hotel

The preliminary injunction in this case was issued after the Supreme Court decision in Sax. It restricted only picketing of the premises (Col. R. 9-10). The Court declined to vacate the injunction after further testimony. (Col. R. 210-14). The testimony clearly shows the Union's attempts to comply with Sax and there is no evidence of violence or coercion (Col. R. 88-194). The temporary injunction was made final (Col. R. 220-21) and affirmed *per curiam* (Col. R. 229). The federal questions relied upon were raised and preserved as in Sherry Frontenac. (Col. R. 205, 217-19, 223-224A).

Nautilus

The preliminary injunction in this case, issued after the Supreme Court decision in Sax, restricted only picketing of the premises (Naut. R. 22-24). The Union answer included a defense that the question was moot since there was no picketing and the union did not plan to resume picketing (Naut. R. 20) but to no avail. No testimony was taken and the temporary injunction was made final (Naut. R. 30-31) and affirmed *per curiam* (Naut. R. 39). The federal ques-

tions were raised and preserved as in Sherry Frontenac (Naut. R. 25-29, 33-34).

The Delmonico Hotel

In this case, as in the others, the preliminary injunction was issued after the Florida Supreme Court decision in the Sax case (Del. R. 26-27). The order restricted only picketing of the hotel premises.

The case is unique in that no strike was ever called. The employees were specifically directed to continue work while the picketing was going on (Del. R. 60). The pickets carried signs stating "This hotel refuses to aid in determining its employees' bargaining agent. Join the Hotel Employees' Union Local 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach." The testimony shows that the employer had in fact refused to agree to any type of election to determine the majority status of the Union (Del. R. 54). The employer admitted that all the employees continued to cross the picket line (Del. R. 46). In short the record makes it clear that there was no coercion of any kind of any employees, nor for that matter of anyone else. The picketing advertised what the record apparently indicates was a fact—that the employer refused to aid in determining the bargaining representative.

Nevertheless, the injunction was made permanent (Del. R. 87-88) and affirmed *per curiam* by the Florida Supreme Court (Del. R. 97). The federal questions relied upon were raised and preserved exactly as in Sherry Frontenac (Del. R. 14, 28-37, 90-92).

The President Madison Hotel

The President Madison case is identical to and was heard with the Delmonico case above. The preliminary injunction was issued on June 16, 1955 (Mad. R. 16-17), was made final (Mad. R. 30-31) and affirmed *per curiam* (Mad.

R. 40). The federal questions relied upon were raised and preserved as in Sherry Frontenac (Mad. R. 14, 18-20, 22-25, 33-35).

The Robert Richter Hotel

This is another "Third Phase" case where the preliminary injunction was issued after the Florida Supreme Court decision in the Sax case. (Rich. R. 106-108). The injunction order was one of the "broad form" which restricted the union not only from picketing but also from publishing in any manner the facts as to a strike at the hotel or as to the refusal of the hotel to negotiate or recognize the union. The temporary injunction was made final (Rich. R. 115) and affirmed *per curiam* (Rich. R. 124). The federal questions relied upon were raised and preserved exactly as in Sherry Frontenac (Rich. R. 59, 103-104, 109-10, 117-19).

Martinique

The Martinique was also one of the "Third Phase" cases where the preliminary injunction was issued after the Florida Supreme Court decision in the Sax case. (Mart. R. 43-45). The injunction was of the "broad form". It was made final (Mart. R. 50) and affirmed *per curiam* (Mart. R. 59). The federal questions relied upon were raised and preserved exactly as in Sherry Frontenac (Mart. R. 24-25, 39-41, 46-49, 52-54).

REASONS FOR GRANTING THE WRIT

The nine instant cases involve the same questions presented to the court in the Sax case and there is no need to repeat in this petition the reasons for granting the writ set forth there. They apply equally well to the cases involved here.

One additional point should be made. The Delmonico and the President Madison cases covered in this petition

present the free speech question in its purest fashion. The effect of the court orders prohibiting the carrying of banners which merely proclaimed that the employer had refused to aid in the determination of a bargaining agent was clearly to prohibit speech and nothing more. The employees were crossing the picket line; the banners did not say a strike was in progress; there was no evidence that the picketing coerced anybody. If this picketing can be restrained, then, indeed, state courts and state legislatures "can enact blanket prohibitions against picketing," the *Vogt* case notwithstanding. (*International Brotherhood of Teamsters* v. *Vogt*, U. S. Sup. Ct., No. 79, Oct. Term 1956 (25 Law Week 4504)).

CONCLUSION

For the reasons above set forth, it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX A—OPINIONS BELOW

Sherry Frontenac

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA.

IN CHANCERY No. 178,668

HARRY LEVY, MARK ALLEN, LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURGH CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER AND SALLY KRONE, HARRY A. LEVY IRREVOCABLE TRUST, MINNIE GINSBERG, JEROME GRANGER, DOING BUSINESS AS THE SHERRY FRONTENER, doing business as the SHERRY FRONTENAC HOTEL,

Plaintiffs,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al.,

Defendants

ORDER DENYING PLAINTIFF'S APPLICATION FOR TEMPORARY INJUNCTIVE RELIEF

THIS CAUSE came on regularly for hearing upon the plaintiff's application for temporary injunctive relief in accordance with the prayers of the verified complaint as amended. The Court has heard and considered the testimony adduced on behalf of the plaintiff, has read and considered the evidenciary exhibits of the plaintiff, and has heard and considered arguments of counsel for the respective parties. In consideration thereof, the Court is of the opinion and finds that the plaintiff has not made a sufficient showing for injunctive relief on the basis of the manner of picketing and the method in which it is being conducted.

IT IS ACCORDINGLY, ORDERED, ADJUDGED AND DECREED that the plaintiff's application for a temporary injunction be and it is hereby denied, without prejudice; and

IT IS FURTHER ORDERED that, the defendants not having filed answers or other pleadings to the complaint, the allegation or contention made by the plaintiff that the picketing is conducted for an unlawful or illegal purpose is not considered nor passed upon, but determination of this question is reserved until final hearing.

DONE AND ORDERED in Chambers, at Miami, Florida, this 11th day of May, 1955.

ROBERT L. FLOYD
Circuit Judge

Sherry Frontenac

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1955, SPECIAL DIVISION A

CASE No. 26,197

BOCA RATON CLUB, INC., A FLORIDA CORPORATION, AND HILDEMART CORPORATION, A FLORIDA CORPORATION,

Petitioners,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents.

* * * * *

CASE No. 26,199

HARRY LEVY, MARK ALLEN LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURGH CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER AND SALLY KRONE, HARRY A. LEVY, IRREVOCABLE TRUST, MINNIE GINSBERG, JEROME GRANGER, DOING BUSINESS AS THE SHERRY FRONTENAC HOTEL,

Petitioners,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents.

* * * * *

(Captions of other cases omitted.)

Opinion filed June 1, 1955.

AN APPEAL FROM THE CIRCUIT COURT FOR DADE COUNTY, ROBERT L. FLOYD, AND GLADYS L. CRAWFORD, JUDGES.

PER CURIAM:

The foregoing cases are similar to Sax Enterprises, Inc. vs. Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, decided May 27, 1955. These cases were combined and heard together in the lower court. Application for temporary injunction was denied after evidence in each case. The reason for denial was that the "plaintiff has not made a sufficient showing for relief on the basis of the manner of the picketing and the method in which it is being conducted." The court further found that "defendants not having filed answers or other pleadings to the complaint, the allegation or contention made by the plaintiff that the picketing is conducted for an unlawful or illegal purpose is not considered nor passed upon, but determination of this question is reversed until final hearing."

On authority of Sax Enterprises, Inc., vs. Hotel Employees Union, Local No. 255 (A. F. of L.), and Albert H. Berlin, Clarence L. Smith and Henry Mischel, as Business Agents and Officers thereof, decided May 27, 1955, certiorari is granted as to that part of the Chancellor's order in each of said causes which deferred ruling upon the question whether or not the picketing was being carried on for an unlawful purpose, and each of said causes is remanded to the Circuit Court with directions to enter a temporary restraining order therein.

It is so ordered.

DREW, C.J., TERRELL, SEBRING AND HOBSON, J. J., CONCUR.

Sherry Frontenac

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA,

IN CHANCERY No. 178,668-J

HARRY LEVY, MARK ALLEN, LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., ALEX T. SPARE, MORRIS LANSBURG CO., JAMES PAULEN, ALVIN C. RICHTER, ALBERT GREEN, CHESTER AND SALLY KRONE, HARRY A. LEVY IRREVOCABLE TRUST, MINNIE GINSBURG, JEROME GRANGER, doing business as the SHERRY FRONTENAC HOTEL,

Plaintiffs,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Defendants.

ORDER GRANTING MOTION TO VACATE PRELIMINARY INJUNCTION

On April 16, 1955, the defendant union placed a picket line at the SHERRY FRONTENAC HOTEL at Miami Beach. The pickets carried placards announcing that "This Hotel refuses to negotiate with Hotel Employees Union Local No. 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach". Simultaneously with the initiation of picketing, a number of the employees at the hotel walked out and abandoned their work. Plaintiffs made application for temporary injunctive relief against the picketing upon the asserted grounds that the picketing was accompanied by force violence and coercion and that it was conducted for an unlawful purpose.

On May 11, 1955, I denied plaintiffs' application for temporary injunctive relief. I found and adjudicated that the plaintiffs had failed to make a sufficient showing for injunctive relief upon the alleged basis of violence and reserved until final hearing deter-

mination of whether or not the picketing was conducted for an unlawful purpose.

The Supreme Court of Florida, on June 1, 1955, granted certiorari as to that part of my order which deferred ruling upon the question of whether or not the picketing was being carried on for an unlawful purpose and remanded the cause with directions to enter a temporary restraining order immediately. And in obedience to the mandate and order of the Supreme Court, I entered a Preliminary Injunction on June 2, 1955. Thereupon the defendants made application to vacate and dissolve such preliminary injunction. I set the motion to vacate for hearing before me on June 4, 1955. I have heard and considered the testimony and evidence and arguments of counsel for the respective parties.

The defendant's motion to vacate the preliminary injunction presents for determination whether the picketing engaged in by the defendants was lawful or unlawful under the law of the case as established by the Supreme Court.

The Supreme Court described the procedural course which must be adopted and pursued by a labor union before it has the right to engage in peaceful picketing of an employer's premises and predicated upon the refusal of the employer to recognize and negotiate with the union as a representative of such employer's employees. The Court said that "In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative, and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations."

Based upon the testimony and evidence adduced before me, I find that the defendant union, through its authorized representatives, did inform the plaintiffs of its desire to engage in negotiations as the bargaining agent of a number of employees at the SHERRY FRONTENAC HOTEL within a reasonable time prior to the date on which picketing began. I further find that the union has established that a number of plaintiffs' employees, although less than a majority, had chosen the defendant union as their bargaining agent and that these employees made this choice

prior to the date of the appearance of the picket line before the plaintiff's premises. I further find that the representatives of the defendant union did inform the plaintiff of the object to be accomplished by the picketing prior to April 16, 1955, and that the plaintiffs did evade and stall the representatives of the defendant union to an extent that no reasonable man could conclude other than that these evasive tactics were for any other purpose than refusing to negotiate. It is apparent from the record in this cause that the course of conduct engaged in by the plaintiffs after the plaintiffs learned of, and were informed about, the defendant union's desire to negotiate was designed to thwart any attempt by the defendant union to be able to point to any concrete evidence that negotiations were, in fact, refused. It was as though a "cat and mouse" game was the weapon to be used by the plaintiffs with the ultimate hope that the union's representatives would tire of playing and finally look elsewhere for recreation. This, the union refused to do, however, and the picket line was the result. The facts and circumstances in this case are substantially the same as those in Whitehead, et al. v. Miami Laundry Company (Fla.) 36 So. 2d, 382, and Johnson v. White Swan Laundry, Inc. (Fla.) 41 So. 2d, 874.

The only major difference in this case and the Johnson case, supra is that in the latter a "strike vote" of the members of the union who were employees of appellee in that case had been taken pursuant to Chapter 447.09 (3 and 4), Florida Statutes. There is evidence before this Court that on May 25, 1955, the defendant union called a "strike vote" and did set up some form of machinery by which to allow its members to cast their ballot. This Court is of the opinion that the facts and circumstances in this case do not make it necessary to invoke the provisions of Chapter 447.09 (3 and 4) Florida Statutes. This is a suit against the union, not its members who were employees of the plaintiff. Subsequent to the union's call for a picket line, a number of the union members, who were employees of the plaintiff refrained from crossing the picket line established by the union and refused to report for work. These employees were replaced by other permanent employees hired by the plaintiffs. The issue is clear. The purpose for the establishment of a picket line was in the exercise of

the union's right of free speech—to proclaim to the world that plaintiffs refused to negotiate with the union's bargaining agent of a number of the employees at plaintiffs' hotel. No evidence of coercion and intimidation by the union against either its own members, who were employees, or against non-union employees of plaintiffs who refused to cross the picket line, has been made to appear.

Were it necessary, however, to decide the constitutionality of Chapter 447.09 (3 and 4), Florida Statutes, I would be constrained to hold the same unconstitutional for the reasons given and on authority of Stapleton v. Mitchell (Kan.) 60 F. Supp. 51, wherein the language of the statute there under consideration was exactly the same as the Flordia Statute, supra.

I, therefore, find that the picketing was not conducted for an unlawful purpose and that the plaintiffs have failed, by competent evidence, to sustain the allegations in its complaint "that the picket line was placed around the plaintiffs' place of business for an unlawful or illegal purpose. . . ." Whitehead, et al, v. Miami Laundry Company, supra; Johnson v. White Swan Laundry, Inc. supra; Moore v. City Dry Cleaners & Laundry, Inc. (Fla.) 41 So. 2d 865; Hotel & Restaurant Employees' & Bartenders' Union Local No. 156, A. F. of L. v. Cothron, et al. (Fla.) 59 So. 2d 366.

It is therefore, ORDERED, ADJUDGED AND DECREED that defendants' Motion to Vacate the Preliminary Injunction heretofore entered in this cause on the 2nd day of June, 1955, be, and the same is hereby granted, and said Preliminary Injunction be, and the same is hereby vacated.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 16th day of June, 1955.

ROBERT L. FLOYD
Circuit Judge

Sherry Frontenac

IN THE SUPREME COURT OF FLORIDA

JUNE TERM, A. D. 1955, EN BANC.

CASE No. 26,197

BOCA RATON CLUB, INC., A FLORIDA CORPORATION, AND HILDEMART CORPORATION, A FLORIDA CORPORATION,

Petitioner,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents.

* * * * *

CASE No. 26,199

HARRY LEVY, et al., d/b/a THE SHERRY-FRONTENAC HOTEL,

Petitioner.

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Respondents.

* * * * *

(Captions of other cases omitted)

Opinion filed October 19, 1955.

WRITS OF CERTIORARI TO THE CIRCUIT COURT OF DADE COUNTY, ROBERT L. FLOYD AND GRADY L. CRAWFORD, JUDGES.

HOBSON, J.:

In *Sax Enterprises* v. *Hotel Employees Union Local No. 255,* 80 So. 2d 602, we decided a prior aspect of the matter which the cases now under consideration bring before this court. In the *Sax*

case we held on the basis of the showing made that it was error to deny a temporary restraining order against the picketing of the Saxony Hotel. The injunctive relief which was granted as a result of our mandates in the *Sax* case and in the instant cases related to picketing and the publicity measures used by the defendant-respondent union in connection therewith. Subsequently defensive pleadings were filed and further testimony taken upon motions of the respondents to dissolve and vacate the temporary injunctions issued pursuant to the mandates of this court. The chancellors below have issued orders of identical effect in all of these cases, granting the motions and dissolving and vacating the temporary injunctions.

Although the parties have attempted to present a multitude of issues in these cases, we are of the view that the only issues really involved are whether (1) the respondent union complied with the prerequisites to lawful picketing outlined in our opinion in the *Sax* case, supra, and (2) whether the picketing was for a lawful or unlawful purpose.

The chancellors found in substance that before the picketing commenced, the union did in fact represent some of the employees although less than a majority; that the union informed the petitioners of its desire to engage in negotiations, and that the petitioners used evasive tactics amounting to a refusal to negotiate or bargain. No one of the chancellors, however, made a finding that the union had, prior to the picketing, established by evidence of substantial character that any of the employees had chosen it as their representative.

Respondents contend that: the findings which were made are supported by competent substantial evidence; such findings in effect established the truth of the message contained in the cards which were displayed by the pickets, and which we reproduced in the *Sax* case, supra; the matter thus resolves itself into a situation where peaceful picketing has been carried on with the objective of accurately publishing the facts of a labor dispute, which is a lawful purpose within the doctrine of *Whitehead* v. *Miami Laundry Co.*, Fla., 36 So. 2d 382, and *Johnson* v. *White Swan Laundry, Inc.*, 41 So. 2d 874.

Petitioners take the position that the respondent union failed to

prove compliance with the prerequisite to lawful picketing set forth in the *Sax* opinion, of establishing "that the employees have chosen it as their representative."

In our opinion in the *Sax* case we said:

> "Without doubt a labor organization has the right to engage in peaceful picketing of an employer's premises when predicated upon the refusal of the employer to recognize and negotiate with the union as the representative of such employer's employees. In order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative, Treasure, Inc. v. Hotel & Restaurant Employees and Bartenders' Union, supra, and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations. See North East Texas Motor Lines, Inc. v. Dickson, 148 Tex. 35, 219 S.W. 2d. 795."

Respondents say that the above pronouncements were nothing more than obiter dicta and that in any event they run counter to the established law of this jurisdiction. They cite our opinion in *Hotel & Restaurant Employees' & Bartenders Union Local No. 156, A. F. of L.* v. *Cothron, et al.,* 59 So. 2d 366, from which we quote:

> "It appears that the Chancellor either misconstrued or misapplied the law to the facts as he found them in entering the injunction. The Chancellor stated that 'Complainants should have been advised of the reasons for the impending picketing and given an opportunity to remedy the cause as they saw fit.' This was no reason to grant an injunction in this case. There is no rule, regulation, or law of this State which requires a notice to the employer of the reasons for an impending strike, as a prerequisite to picketing, and the Courts are without power to supply such rule, regulation or law. The advisability or necessity for such is for legislative determination and not for the courts."

We face this contention of respondents forthrightly. Our opinion in the *Cothron* case does indeed appear to be contrary to our state-

ment in the *Sax* case, supra, to the effect that as prerequisite to lawful picketing "the labor organization must also inform the employer of the object to be accomplished by the picketing". It might be said that the underlying reason for our ruling in the *Cothron* case is a sound basis for recanting our pronouncement as to the other two prerequisites to lawful picketing outlined in the *Sax* opinion. We have given careful consideration to the apparent conflict between these two cases and have concluded that although there may exist "no rule, regulation or law of this State which requires" the foregoing prerequisites to lawful picketing, certainly honesty of purpose, fair dealing and a sound public policy demand them. Moreover, Sec. 447.03, F.S., grants unto *employees* the right to "*self*-organization" (Italics supplied) and "to bargain *collectively* through representatives of *their own choosing*" (Italics supplied). It seems clear that before being required to enter into negotiations with an alleged bargaining agent an employer should be shown by evidence of substantial character that his employees, or at least some of them, have voluntarily exercised the rights accorded them by our statute. Hence we deem it appropriate for the courts to fix reasonable and fair prerequisites to the end that, rather than economic strife, there may exist peaceful accord of labor disputes so necessary in the interest of the common weal.

The placards displayed by the pickets carried the following words: "This hotel refused to negotiate with Hotel Employees Union, Local No. 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach". This language unquestionably connotes to the "common mind" a compliance with all prerequisites to lawful picketing, i.e., a pre-existing honest and forthright attempt to bring about negotiations between an authorized bargaining agent and the employer because of a bona fide labor dispute between employee and employer and a fair opportunity to engage in negotiations. It is clear that such an opportunity cannot be said to exist until and unless the employer is first assured by evidence of substantial character that if he negotiates he will do so with an authorized bargaining agent. The words on the placards "refused to negotiate" necessarily presuppose an opportunity to negotiate. Surely no one can doubt that such opportunity should be a "fair" opportunity. The placards did not speak the truth

in all its stark significance or give to the public actual facts concerning a labor dispute. Indeed, so far as this record shows petitioners, except for the uncorroborated representations of a putative bargaining agent, never, prior to the most recent hearing in the circuit court, knew as a matter of fact that their employees were actually dissatisfied and had, because of such dissatisfaction, designated the respondent as their bargaining agent. It follows, as night the day, that without such knowledge they could not know that a labor dispute existed nor, indeed, would a labor dispute normally come into being without some dissatisfaction on the part of the employees. No dispute of any kind or character can exist unless the parties said to be involved know that there is actually disagreement between them.

Moreover, it is the duty of the employer to treat only with the employees' true representative and the unsupported statement of a labor organizer is an insufficient showing to justify the employer in dealing with the alleged bargaining agent. In *Texarkana Bus Co.* v. *National Labor Relations Board,* 119 F. 2d 480, the court stated, and we quote with approval:

> "The employer can not be required to devote his time to negotiating with every individual claiming to represent a bargaining unit, and can not be charged with unfair practice in this regard unless there is presented to him evidence of a substantial character showing that the representative is in fact an authorized bargaining agency."

Although the court was there dealing with the National Labor Relations Act which *does not* "require an employer to bargain collectively with a union which has not been designated by a *majority* of the employees in an appropriate unit" (italics supplied), nevertheless the rationale of the opinion in that case is equally applicable here. This is so because there is no rule, regulation or law of this State of which we are cognizant which requires an employer to bargain collectively with a union which has not been designated by at least *some* of the employees in an appropriate unit. The Circuit Court of Appeals of the Eighth Circuit in the last cited case said, and we again quote with approval:

> "As the employer must act at his peril in recognizing a

representative, common prudence dictates that he refrain from acting until satisfactory proof is produced that the representative in fact speaks for a majority of the employees." 119 F. 2d 480, 484.

It is deemed appropriate to observe that we have outlined *prerequisites* to lawful picketing and it is not sufficient to establish, even in court, after picketing is a reality that the putative bargaining agent had in fact, prior to picketing, been so designated by an insignificant number or, for that matter, a majority of the employer's employees.

We hold herein that as prerequisites to lawful picketing the union must establish by some evidence of substantial character that at least some of the employees have chosen it as their representative and "afford to the employer a fair opportunity to engage in negotiations", any pronouncement in the *Cothron* case to the contrary notwithstanding. We might add that we deem it necessary in order to afford to the employer a fair opportunity to engage in negotiations that the labor organization inform the employer of the subjects intended for negotiation.

The picketing of petitioners' places of business by the respondent union under the facts and circumstances of these cases and upon the basis that petitioners refused to negotiate with the union is the unlawful use of economic pressure to coerce the petitioners into negotiations with an alleged agent who failed and refused as required by law and just dealing timely and appropriately to establish his authority. Hence the picketing is for an unlawful purpose.

Respondents, however, say the petitioners knew that certain organizers, particularly the respondent Mr. David Herman, had attempted to persuade the employees to designate respondent union as their bargaining agent or to join the union, as is evidenced by the fact that the employers endeavored to dissuade the employees from taking either action. Such circumstance falls far short of establishing as a matter of fact that the employees had pursued either course and it assuredly does not prove that the employers knew that the employees, or any of them, had actually so designated the union or had joined it.

This record paints a picture not of employees exercising their

right to "self-organization" or their right to "bargain collectively through representatives of their own choosing" but, on the contrary, limns one of two labor organizers coming to Miami Beach early this year, organizing a local labor union, and attempting for a period of two to three months, as they had every right to do, to persuade petitioners' employees that they were not being treated fairly in the matter of hours, wages and conditions of work, and that they should therefore designate the union as their bargaining agent or join the union or do both. After failing to so persuade no more than an insignificant number of such employees that they were being treated unfairly, as is established by the designation cards introduced in evidence, they immediately resorted to the use of the coercive effect of picketing without either of them first establishing by any evidence substantial in character that the respondent union in truth and in fact had been designated as the bargaining agent of any employees of the petitioner. Thereafter these men, who cannot be said to have given the employers a fair opportunity to negotiate since they gave said employers no substantial evidence of the union's authority to represent any of the employees, arranged for and had the picket lines thrown up for the obvious purpose of forcing the employers to cause their employees to designate the union as their bargaining agent and perhaps to join the union. That picketing carried on under such circumstances is unlawful cannot be gainsaid. It falls within the "unlawful purpose" doctrine of *Miami Typographical Union* v. *Ormerod,* 61 So. 2d 753

We hold that the picketing in these cases was begun by respondents without first having submitted to the petitioners competent substantial evidence of their authority as alleged bargaining agents, which caused the picketing to be unlawful, and that the picketing was carried on for an unlawful purpose.

It follows that the petitions for certiorari should be granted and the challenged orders quashed.

It is so ordered.

DREW, C. J., TERRELL AND SEBRING, JJ., CONCUR.

Sherry Frontenac

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957, DIVISION B.

CASE No. 28,249

HOTEL EMPLOYEES UNION, LOCAL NO 255 (A. F. of L.), et al.,

Appellants,

vs.

HARRY LEVY, MARK ALLEN TRUST, ERWIN J. FRIED, et al.

Appellee.

Opinion filed March 15, 1957.

AN APPEAL FROM THE CIRCUIT COURT FOR DADE COUNTY, CHARLES A. CARROLL, JUDGE.

PER CURIAM

Affirmed on authority of Fontainebleau Hotel Corp vs. Hotel Employees Union, Local No. 255 (A. F. of L.), et al., opinion filed February 1, 1957.

TERRELL, C. J. HOBSON, DREW and O'DONNELL, J.J., CONCUR.

(Per Curiam opinions identical, except for the caption, were issued on March 15, 1957, in each of the other cases as to which review is here sought.)

Lombardy

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTNY, FLORIDA.

IN CHANCERY. No. 179,408

STUYVESANT CORPORATION, A FLORIDA CORPORATION,

Plaintiff,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Defendants.

ORDER

THIS CAUSE has been heard after due notice on the plaintiff's application for interlocutory injunctive relief and the Court has considered the testimony and the proofs submitted in support of, and in opposition to such application.

The Court is guided and governed by the opinion of the Supreme Court of Florida filed May 27, 1955, in Sax Enterprises, Inc. versus Hotel Employees Union, Local No. 255 (A. F. of L.) et al.

Accordingly, it is ordered and decreed that the defendants, Hotel Employees Union, Local No. 255 (A. F. of L.) and Albert H. Berlin, Clarence L. Smith and Henry Mischel, their agents, servants, employees and all persons acting in concert or participation with them, be and they are, and each of them is, restrained and enjoined until the further order of this Court from picketing the plaintiff's place of business located at 6305 Collins Avenue, Miami Beach, Florida.

The plaintiff shall file herein an injunction bond payable to the defendants, in the principal amount of $2500.00, with good and sufficient surety, to be approved by the Clerk of this Court and conditioned as required by law to pay all costs, damages and expenses which may be suffered by the defendants by reason of the issuing of this injunction if the injunction shall be dissolved, or the complaint upon which it was granted, be dismissed.

ORDERED AND DECREED in the Courthouse, Dade County, Florida, at Miami, this 2 day of June, 1955.

MARSHALL C. WISEHART
Circuit Court Judge

Miami Colonial

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

IN CHANCERY NO. 180056-C

ABE ALLENBERG, et al., d/b/a, MIAMI COLONIAL HOTEL,

Plaintiffs,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al.,

Defendants

OPINION AND ORDER

Giblin, Circuit Judge:

The Supreme Court of Florida in Sax Enterprises, Inc. v. Hotel Employees Union, Local No. 255 (in which the court's opinion was written by Mr. Justice Hobson) has prescribed the procedural course which must be adopted and followed by a labor union before there can be a lawful picketing of an employer's place of business.

The court, in the cited case, said that "in order for such picketing to be lawful, the union must establish that the employees have chosen it as their representative . . . and the labor organization must also inform the employer of the object to be accomplished by the picketing and afford to the employer a fair opportunity to engage in negotiations."

Guided and governed by the Supreme Court's decision, I entered interlocutory orders by which picketing at the three hotels involved in these cases was enjoined. I held that the picketing was unlawful; and one of the factual bases for the holding was that the union had not established that the employees had chosen it as their representative.

Counsel, in oral argument, have advised me that at the hearing before the appellate court in the cited case Mr. Justice Hobson, in answer to an inquiry as to the method which should be employed by the union in establishing that the employees had chosen it as their representative, replied that the union should submit to

the employer "trustworthy" evidence of the selection by the employees of the union as their bargaining agent. Without any attempt to express in clearer or better language the sensible and logical extemporaneous response of Mr. Justice Hobson (who later wrote the Court's opinion), my interpretation of his opinion is that it is incumbent on the union, before the economic weapon of picketing may be legally used, to present to the employer evidence which would or should be satisfactory and acceptable to a fair, reasonable and prudent employer.

The testimony and proofs adduced at the hearing of the plaintiffs' applications for interlocutory injunctive relief in these cases showed conclusively that, before the union's picketing of the three hotels began, the union had submitted to the employers no evidence whatever that the employees had chosen it as their representative other than the unsupported assertion of a small group of union officials or agents that the union represented the employees.

It is obvious, therefore, that at its inception the picketing was unlawful and that, had I not enjoined it, I would have been guilty of a deliberate refusal to comply with the directives of our court of last resort.

The evidence, at the hearing of the applications for temporary restraining orders and at the hearing of the defendant union's motions to dissolve the injunctions, disclosed that, simultaneously with the initiation of the unlawful picketing, a number of the employees of each of the three hotels struck and walked out, abandoning their work. Their action, as the Supreme Court of the United States has held in National Labor Relations Board v. Sands Manufacturing Co., 306 U. S. 332, privileged their employers to engage other employees to fill their places.

The evidence reveals that the employees who severed their relations with their employers have been lawfully replaced by permanent employees, who, so far as the evidence shows, are not members of or represented by the defendant union.

Assuming, without deciding, that the former employees who walked out on strike had chosen the union as their representative, there has been no showing at the hearing of the motions for the dissolution of the injunctions that any of the present employees

have selected the union as their bargaining agent or that they have any grievances against the employers. If, in fact, the union had been designated as their bargaining agent by the former employees, they no longer occupy the status of employees of the plaintiff employers.

At the conclusion of the initial hearing I expressed the opinion, to which I adhere, that the union had acted precipitately. Not only did it act precipitately, but it acted unwisely. By inducing the former employees to leave their employment, before there had been compliance with the procedural rules prescribed by the Supreme Court, the union was guilty of a disservice to such employees, because its precipitate action privileged the employers to supplant the employees who abandoned their jobs with other employees.

The motions to dissolve the injunctive orders should be, and they are, denied, because it has not been established that the defendant union has been chosen by the present employees as their bargaining agent. See Basch & Sons, Inc. v. Retail Union of New Jersey, Local 108 (N.J.), 99 Atl. 2d 519. The circumstances are such that to permit a resumption of picketing would be an unwarranted exercise of judicial power. I cannot remedy the mistake which the union and the former employees made by their hasty and ill-advised action.

The primary purpose of resumed picketing could only be to compel the discharge of the present employees and the reinstatement of the former employees. Such a purpose would be an unlawful one.

This order is signed in triplicate so that a counterpart may be filed and recorded in each of the three cases.

Ordered in chambers in the Courthouse of Dade, County, Florida, at Miami, June 10, 1955, by

VINCENT C. GIBLIN
Circuit Judge

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA,

IN CHANCERY No. 180268.

A. H. S. CORPORATION, A FLORIDA CORPORATION,
Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al.,
Defendants.

PRELIMINARY INJUNCTION

This cause came on to be heard before me on plaintiff's application for preliminary injunction, and the Court considered the bill and supporting affidavits and answer of defendants submitted in opposition to the application.

The plaintiff charged, among other things, that the defendant union had picketed the plaintiff's hotel for failure of the plaintiff to negotiate or deal with the union, as a representative of the plaintiff's employees, and that such picketing was unlawful and should be enjoined, in that there was no labor dispute and there had been no refusal to negotiate with the proper representative, but that the defendant union and its agents had failed to furnish any satisfactory proof or evidence of their having been chosen by a majority of the employees to act as their representative or bargaining agent. There were supporting affidavits on plaintiff's bill on these points.

Defendants answered, contending for but making no sufficient showing of a right to represent the employees, and defendants answered that the question was moot and there should be no injunction because there was no longer any picketing and disclaimed any intention to resume picketing.

It appears the picketing commenced at this hotel on June 3, 1955. On Saturday, June 4th, the plaintiff caused the present bill for injunction to be prepared and a copy of it was served on defendant or defendant's counsel late on the day of June 4th; that the picketing continued until sometime on June 5th, when it was

stopped, but resumed again later on June 5th and continued until 2:00 A.M., of Monday, June 6th, since which it has not again been resumed.

I find that the picketing was unlawful, as determined by the Supreme Court in the recent case of Sax Enterprises, Inc. against this same defendant union by an opinion and judgment of that Court dated May 27, 1955, Because of the failure to establish the representation as indicated above it follows that the picketing was unlawful, at the time it was in progress and at the time the defendant union received notice of the proceeding or intention to proceed for an injunction against the picketing.

I further find that the subsequent termination of the picketing does not render the matter moot and does not preclude the entry of an injunction. On this point this Court called for authorities from the parties, and plaintiff has furnished ample authorities to that effect, including the following:

United States v. W. T. Grant Co., 345 U.S. 629, 97 L. Ed. 1301, 73 S. Ct. 894.

Henry Shore v. Building & Construction Trades Council, 173 Fed. (2nd) 678.

Peters v. Southern Bell Tel. & Tel. Co., et al., 70 So. (2nd) 547.

Jones v. Securities and Exchange Commission, 288 U.S. 1, 56 S. Ct. 654, 80 L. Ed. 1015.

United States v. Oregon State Medical Society, et al., 343 U.S. 326, 72 S. Ct. 690, 96 L. Ed. 978.

Securities and Exchange Commission v. Torr, 87 Fed. (2nd) 446, 449.

Bowling v. National Convoy & Trucking Co., 135 So. 541.

See High on Injunction, Vol. 1, p. 9.

WEREUPON, IT IS ORDERED that the defendants and each of them, their officers, agents, servants, employees and attorneys, be and they and each of them hereby are enjoined and restrained until further order of this Court from picketing the hotel premises involved in this suit.

The plaintiff shall file herein an injunction bond, payable to the defendants in the principal amount of $2000.00, with good

and sufficient surety to be approved by the Clerk of this Court, and conditioned as required by law, to pay all costs, damages and expenses which may be suffered by defendants by reason of the issuing of said injunction, if the injunction shall be dissolved or if the bill upon which it was granted be dismissed.

DONE AND ORDERED, in Chambers, at Miami, Florida, this 17 day of June, 1955.

CHARLES A. CARROLL
Circuit Judge

Delmonico

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,374

HOTEL DELMONICO, INC., A FLORIDA CORPORATION,

Plaintiff,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Defendants.

TEMPORARY RESTRAINING ORDER

THIS CAUSE has been heard after due notice on plaintiff's application for interlocutory injunctive relief, and the Court has heard and considered the proofs submitted in support of and in opposition to such application.

The Court is guided and governed by the opinion of the Supreme Court of Florida filed May 27, 1955, in SAX ENTERPRISES, INC, versus HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., as the same was applied in my opinion and order filed June 10, 1955, in McALLISTER HOTEL, INC. versus HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.). et al (Chancery Cause Numbered 180,054), BISCAYNE TERRACE HOTEL, INC. versus HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., (Chancery Cause Numbered 180,055), and ABE ALLENBERG, et al., doing business as MIAMI COLONIAL HOTEL versus HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al (Chancery Caus Numbered 180,056). Under the principles therein enunciate the picketing is unlawful.

ACCORDINGLY, IT IS ORDERED AND DECREED that the defendants, HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Officers thereof, their agents, servants, employees, and all persons act-

ing in concert or participation with them, be and they are, and each of them is, restrained and enjoined until the further order of this Court from picketing the plaintiff's place of business located at 6393 Collins Avenue, Miami Beach, Florida.

The plaintiff shall, within four days from this date, furnish and file a good and sufficient bond in the penal sum of $2,500.00, payable to the defendants, with surety or sureties to be approved by the Clerk, conditioned to pay all damages and costs which the defendants shall suffer or incur as a result of the wrongful application for this order should it be determined that such application was wrongful.

DONE AND ORDERED in the Courthouse, Dade County, Florida, at Miami, June 16, 1955.

VINCENT C. GIBLIN
Circuit Judge

President Madison

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,373

SAUL COHEN, SIDNEY RAFFEL, HERBERT ROBBINS, SAMUEL COHEN, d/b/a PRESIDENT MADISON HOTEL,

Plaintiffs,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND ALBERT H. BERLIN, CLARENCE L. SMITH AND HENRY MISCHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF,

Defendants.

TEMPORARY RESTRAINING ORDER

THIS CAUSE has been heard after due notice on plaintiffs' application for interlocutory injunctive relief, and the Court has heard and considered the proofs submitted in support of and in opposition to such application.

The Court is guided and governed by the opinion of the Supreme Court of Florida filed May 27, 1955, in SAX ENTERPRISES, INC. versus HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al., as the same was applied in my opinion and order filed June 10, 1955, in McALLISTER HOTEL INC. versus HOTEL EMPLOYEES UNION LOCAL NO. 255 (A. F. of L.), et al. (Chancery Cause Numbered 180,054), BISCAYNE TERRACE HOTEL, INC. versus HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al (Chancery Cause Numbered 180,055), and ABE ALLENBERG, et al., doing business as MIAMI COLONIAL HOTEL versus HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.) et al (Chancery Cause Numbered 180,056). Under the principles therein enunciated the picketing is unlawful.

ACCORDINGLY, IT IS ORDERED AND DECREED that the defendants, HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), and ALBERT H. BERLIN, CLARENCE L. SMITH and HENRY MISCHEL, as Business Agents and Offi-

cers thereof, their agents, servants, employees, and all persons acting in concert or participation with them, be and they are, and each of them is, restrained and enjoined until the further order of this Court from picketing the plaintiffs' place of business located at 3801 Collins Avenue, Miami Beach, Florida.

The plaintiff shall, within four days from this date, furnish and file a good and sufficient bond in the penal sum of $2,500.00, payable to the defendants, with surety or sureties to be approved by the Clerk, conditioned to pay all damages and costs which the defendants shall suffer or incur as a result of the wrongful application for this order should it be determined that such application was wrongful.

DONE AND ORDERED in the Courthouse, Dade County, Florida, at Miami, June 16, 1955.

VINCENT C. GIBLIN
Circuit Judge

Robert Richter

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180412-C

MORRIS LANSBURGH AND DANIEL LIFTER,
Plaintiffs,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255, OF THE AMERICAN FEDERATION OF LABOR, et al.,
Defendants.

PRELIMINARY INJUNCTION

Plaintiffs' application for preliminary injunction came on for hearing before the Court, after notice, on the sworn bill of complaint and affidavits filed by the Plaintiffs in support of the application, and the sworn answer of the Defendants and counter-affidavits filed by the Defendants in opposition to the application. Arguments of counsel for the respective parties were heard.

WHEREUPON, IT IS ORDERED that the applications and prayer for a preliminary injunction is granted for the reason that it affirmatively appears from the pleadings filed in this Court and the affidavits and counter-affidavits filed that the Plaintiffs did not refuse to negotiate with the Defendants, but that the Defendants failed to provide the Plaintiffs with substantial or satisfactory proof or evidence that would establish to the Plaintiffs that the Defendants had been designated as the collective bargaining agent for the Plaintiffs' employees. It further appears from the record in this cause that the Defendants engaged in picketing for an illegal purpose, that of forcing the employees of the Robert Richter Hotel to designate the union or the individual defendants as their bargaining agent and to coerce the owners of the hotel, through economic sanction, to sign a contract with the union and to use said contract as a basis to compel the employees of the Plaintiffs to become members of the defendant union.

ACCORDINGLY, IT IS ORDERED as follows:

1. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined

and restrained from picketing or causing to be picketed the Robert Richter Hotel and Cabana Club, its environs or approaches.

2. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from carrying or causing to be carried any signs, placards or propaganda of any nature, kind or description in front of the Robert Richter Hotel and Cabana Club, its environs or approaches.

3. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from publishing or causing to be published any statements to the effect that a strike or lockout is in effect at the Robert Richter Hotel or Cabana Club, or that the plaintiffs, Morris Lansburgh and Daniel Lifter, refuse to negotiate or recognize the defendants as a collective bargaining agent of the employees of the Robert Richter Hotel.

4. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants be and they are hereby enjoined and restrained from molesting, interfering with, intimidating, coercing or directing any violence toward the Plaintiffs, Morris Lansburgh and Daniel Lifter, their property, their employees or servants.

5. The Plaintiffs, or one of them, shall file herein an injunction bond, payable to the defendants in the principal amount of $2,000.00, with good and sufficient surety to be approved by the Clerk of this Court, and conditioned as required by law, to pay all costs, damages and expenses which may be suffered by defendants by reason of the issuing of said injunction, if the injunction shall be dissolved or if the bill upon which it was granted be dismissed.

6. This order shall remain in force and effect pending this cause and until further order of this Court.

DONE AND ORDERED, in Chambers, at Miami, Florida, this 17th day of June, A. D. 1955.

CHARLES A. CARROLL
Circuit Judge

Martinique

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY No. 180,445

MARTINIQUE HOTEL, INC., A FLORIDA CORPORATION

Plaintiff,

v.

HOTEL EMPLOYEES UNION, LOCAL 255 (AFofL), et al.,

Defendants.

PRELIMINARY INJUNCTION

Plaintiff's application for preliminary injunction came on for hearing before the court, after notice, on the sworn bill of complaint and affidavits filed by the plaintiff in support of the application, and the sworn answer of the defendants and counter affidavits filed by the defendants in opposition to the application. Arguments of counsel for the respective parties were heard.

WHEREUPON, IT IS ORDERED that the application and prayer for a preliminary injunction is granted for the reason that it affirmatively appears from the pleadings filed in this court and the affidavits and counter-affidavits filed that the plaintiff did not refuse to negotiate with the defendants, but that the defendants failed to provide the plaintiff with substantial or satisfactory proof or evidence that would establish to the plaintiff that the defendants had been designated as the collective bargaining agent for the plaintiff's employees. It further appears from the record in this cause that the defendants engaged in picketing for an illegal purpose, that of forcing the employees of the Martinique Hotel to designate the union or the individual defendants as their bargaining agent and to coerce the owners of the hotel, through economic sanction, to sign a contract with the union and to use said contract as a basis to compel the employees of the plaintiff hotel to become members of the defendant union.

ACCORDINGLY, IT IS ORDERED as follows:

1. That the defendants, and each of them, and their servants,

agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from picketing or causing to be picketed the Martinique Hotel, its environs or approaches.

2. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from carrying or causing to be carried any signs, placards or propaganda of any nature, kind or description in front of the Martinique Hotel, its environs or approaches.

3. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants, be and they are hereby enjoined and restrained from publishing or causing to be published any statements to the effect that a strike or lockout is in effect at the Martinique Hotel, or that the plaintiff refuses to negotiate or recognize the defendants as a collective bargaining agent of the employees of the Martinique Hotel.

4. That the defendants, and each of them, and their servants, agents, officers, organizers and employees, or anyone acting in conspiracy with the defendants be and they are hereby enjoined and restrained from molesting, interfering with, intimidating, coercing or directing any violence toward the plaintiff hotel, its property, its employees or servants.

5. The plaintiff shall file herein an injunction bond, payable to the defendants in the principal amount of $2,000.00 with good and sufficient surety to be approved by the Clerk of this Court, and conditioned as required by law, to pay all costs, damages and expenses which may be suffered by defendants by reason of the issuing of said injunction, if the injunction shall be dissolved or if the bill upon which it was granted be dismissed.

6. This order shall remain in force and effect pending this cause and until further order of this court.

DONE AND ORDERED in chambers at Miami, Dade County, Florida, this 17 day of June, 1955.

CHARLES A. CARROLL
Circuit Judge

APPENDIX B

ASSIGNMENTS OF ERROR

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

IN CHANCERY No. 178,668-J

HARRY LEVY, MARK ALLEN, LEVY TRUST, ERWIN J. FRIED, GENERAL OPERATING CO., et al., d/b/a THE SHERRY FRONTENAC HOTEL,

Plaintiffs

- versus -

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.) et al.,

Defendants

ASSIGNMENTS OF ERROR

Come now the defendants by their undersigned solicitors and make the following assignments of error as the errors which they intend to reply upon in the Supreme Court of Florida, for a reversal of the Order (or Final Decree) made herein on the 30th day of November, 1955, and recorded in Chancery Order Book 1214, page 240 of the records of this Court, from they have appealed:

1. The Court erred in enjoining the defendants in peaceful picketing the business place of the complainants, whereby your defendant Union and its individual members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly, and the right to work or refrain from working as guaranteed within the meaning and scope of Sections I, XII, XIII, XVII and XIX, Declaration of Rights, Constitution of the State of Florida, and Amendments I, V, XIII and XIV of the Constitution of the United States of America.

2. The Court erred (in and by such final decree) in finding that

the defendants should have established to the satisfaction of the employer, that the employees had chosen defendant Union as their representative and further requiring that the labor organization must also inform the employer of the object to be accomplished by picketing and afford an unwilling or hostile employer an unspecified waiting period within which to engage in negotiations, all as a prerequisite to the right to strike and picket, whereby your defendants and the Union members became disenfranchised from the exercise of their constitutional guarantees of freedom of speech, lawful assembly and the right to work or refrain from working as guaranteed by Amendments I, V, XIII and XIV, of the Constitution of the United States of America.

3. The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8 and Article 6 of the Constitution of the United States.

4. The Court erred in enjoining the publication of the existence of a labor dispute thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

5. The Court erred (in and by such final decree) in enjoining peaceful picketing and the dissemination of information predicated upon an unsubstantiated finding of fact, thereby depriving the members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

6. The Court erred in requiring a direct employer-employee relationship as a prerequisite to picketing and as a prerequisite to publicizing the existence of a labor dispute, contrary to Amendments I and XIV of the Constitution of the United States of America.

7. The Court erred (in and by such final decree) in permanently enjoining peaceful picketing and the publicizing of the existence of a labor dispute and thus granting injunctive relief beyond any showing of necessity therefor, and beyond the scope of any finding of fact insubstantial or otherwise, thereby depriving the

members of this Union the guarantees of Amendments I and XIV of the Constitution of the United States.

8. The Court erred (in and by said final decree) in assessing costs against the defendants.

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(Substantially identical assignments of error were filed in each of the other cases here sought to be reviewed.)

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SUPREME COURT. U. S. Nos. 5 & 6

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

HOTEL EMPLOYEES UNION, LOCAL NO. 255, ET AL.,
Petitioners.

v.

SAX ENTERPRISES, INC., ET AL.; HARRY LEVY, ET AL., DOING BUSINESS AS SHERRY FRONTENAC HOTEL, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR PETITIONERS

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IN THE

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OCTOBER TERM, 1958

Nos. 5 & 6

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Petitioners.

v.

SAX ENTERPRISES, INC., ET AL.; HARRY LEVY, ET AL., DOING BUSINESS AS SHERRY FRONTENAC HOTEL, ET AL.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinions and orders of the various judges of the Circuit Court for Dade County in these cases are unreported. The opinions of the Florida Supreme Court are all reported. They are as follows:

1. *Sax Enterprises, Inc.* v. *Hotel Employees Union,* 80 So. 2d 602 (1955) (R. 16), reversing the denial of temporary relief by the Circuit Court (R. 10) in the Saxony case.

2. *Boca Raton Club* v. *Hotel Employees Union,* 80 So. 2d 680 (1955) (R. 272, 550), similarly reversing, per curiam, similar refusals in six other cases, including the Sans Souci (R. 89) and the Sherry Frontenac (R. 534).

3. *Thomas Jefferson, Inc.* v. *Hotel Employees Union,* 81 So. 2d 731 (1955) (R. 502), granting supersedeas as to the portion of the Circuit Court order in the San Marino case (R. 434), providing for a secret ballot election.

4. *Boca Raton Club* v. *Hotel Employees Union,* 83 So. 2d 11 (1955) (R. 277, 577), reversing, in the six cases covered in the second opinion above, the action of the trial courts

vacating temporary injunctions after hearing (R. 101, 546).

5. *R. S. Levy* v. *Hotel Employees Union,* 83 So. 2d 852 (1955) (R. 388), reversing the denial (R. 379) of temporary relief in the Versailles case.

6. *Thomas Jefferson, Inc.* v. *Hotel Employees Union,* 84 So. 2d 583 (1956) (R. 507), reversing the order for election (R. 434) in the San Marino case.

7. *Fontainebleau Hotel Corp.* v. *Hotel Employees Union,* 92 So. 2d 415 (1957), reprinted in Appendix A to this brief.

8. Separate but identical per curiam affirmances of twenty-two cases, including the twelve on review here, on the authority of the *Fontainebleau Hotel Corp.* case. These per curiam opinions (R. 57, 295, 399, 520, 574, 657, 801, 823, 878, 908, 1006, 1090), are reported in 93 So. 2d 583-600.

JURISDICTION

The judgments of the Supreme Court of Florida in each of twelve cases were entered on March 15, 1957. On June 11, 1957, Mr. Justice Black ordered that the time for filing "petition or petitions for writ or writs of certiorari" be extended to and including August 12, 1957. On August 12, two petitions for certiorari, covering all twelve cases were filed. They were granted, and the cases consolidated, on December 16, 1957. (R. 1095; 355 U. S. 902). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

STATUTES INVOLVED

Laws of Florida, 1943, No. 334, Ch. 21968, Fla. Stat. (1955) §§ 447.01-447.15, provides in pertinent part as follows:

> Section 1. Policy. (1) Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use.

The working man, unionist or nonunionist, must be protected. The right to work is the right to live.

(2) It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

Section 3. Employee Rights. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Section 9. Prohibited Acts. It shall be unlawful for any person:

. . . . . .

(3) To participate in any strike, walk-out, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in subsection (3) of this section without a secret ballot.

. . . . . .

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in Section 3 of this Act, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.

The relevant portions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) provide as follows:

Sec. 7. Employees shall have the right to self-organi-

zation, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .

* * * *

Sec. 10. (a) The Board is empowered as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise. *Provided,* That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

QUESTIONS PRESENTED

1. Whether a state may constitutionally establish specific preconditions for the use of pickets as a method of communication (and enjoin all picketing not meeting those preconditions as picketing for an "unlawful purpose") where:
   (a) the objective sought to be achieved by the pickets is not unlawful or contrary to any policy of the state,
   (b) the picket signs are truthful,
   (c) the picketing is peaceful.
2. Whether, under the same circumstances, the state may

constitutionally prohibit all other forms of publication as to the facts of a labor dispute.

3. Whether by the course of its decisions here the Florida court denied petitioner due process and the equal protection of the laws.

4. Whether Florida may prohibit peaceful picketing protected by the National Labor Relations Act in an industry affecting commerce over which the National Labor Relations Board refuses to exercise jurisdiction.

STATEMENT OF THE CASE

INTRODUCTION

These are 12 of 22 separate cases which were decided, in identical per curiam opinions, by the Supreme Court of Florida on March 15, 1957. Each opinion affirmed, on the authority of the Florida court's prior opinion in *Fontainebleau Hotel Corp.* v. *Hotel Employees Union,* 92 So. 2d, an injunction against peaceful picketing by the union, petitioner here, of a Miami or Miami Beach hotel. In 9 of the 22 cases, the underlying dispute between the employer and the union has been settled by the negotiation of a collective bargaining agreement. Review was sought and granted, in two petitions for certiorari, in 12 of the remaining cases.

These cases were briefed together in the Supreme Court of Florida. They present, we believe, identical issues. They are, however, distinct cases. There were 12 separate records in the Supreme Court of Florida. The findings of the trial courts and the injunctive orders issued are not identical in each case. And in some cases there have been repeated reviews by the Florida Supreme Court of interlocutory trial court orders.

The result is, of course, a large, complex and cumbersome record in which it is, unfortunately, very difficult to find

one's way.[1] More to the point, it is also difficult to present an easily understandable description of what happened in each of the 12 cases, since they did not proceed either simultaneously or consecutively but were interspersed, with no less than seven separate opinions of the Florida Supreme Court having been issued prior to the final affirmances now on review. In our petitions for certiorari we met this problem by describing in detail only 4 of the 12 cases, specifying with respect to the others only what we believed to be the relevant differences. Since counsel for respondents apparently believe, although they have never specified the basis for that belief, that all 12 cases must be considered by the Court, we have abandoned that approach here.

In the statement which follows, therefore, we will attempt to show the history of the entire litigation in chronological sequence, which is the way we think is most comprehensible. Since this necessarily involves jumping about between cases, we have also included, as Appendix B to this brief, a chart of the litigation chronology, with complete record references, showing what happened when in each case, omitting only what we believe are non-essentials. On the chart and in this statement, the cases will not be referred to by their formal captions, which are in themselves somewhat confusing, but by the name of the hotel, as follows:

Name of Respondent	*Name of Hotel*	*Record Pages*
Sax Enterprises, Inc.	Saxony	1-78
Leevlans Corp.	Sans Souci	79-296

[1] In an effort to conserve the time of counsel and of the Court, and to minimize the potential confusion created by this situation, we sought, both prior to the filing of the petitions herein, and again after certiorari was granted, to enter into a stipulation with counsel for the various respondents, pursuant to which only a representative few of the 12 cases would be presented for review, the others to abide by the result. Principal counsel for the respondents appeared to agree in principle on both occasions but failed to execute the proposed stipulations. No response was filed to the petitions for certiorari.

Harry Levy, et al.	Sherry Frontenac	523-575
Stuyvesant Corporation	Lombardy	577-658
Abe Allenberg, et al.	Miami Colonial	659-802
A. H. S. Corporation	Nautilus	803-824
Hotel Delmonico, Inc.	Delmonico	825-879
Saul Cohen, et al.	President Madison	881-911
Morris Lansburg & Daniel Lifter	Robert Richter	913-1044
Martinique Hotel, Ind.	Martinique	1045-1093
R. S. Levy, Daniel Lifter, et al.	Versailles	297-402
Thomas Jefferson, Inc.	San Marino	403-521

BACKGROUND

In February, 1955, the petitioner, Hotel Employees Union, Local 255, began a campaign to organize the employees of the resort hotels in Miami and Miami Beach, Florida. Because of the low wages, long hours and poor working conditions at these hotels (see, e.g., R. 39, 41, 143, 153, 175, 188, 191) the campaign met with considerable success. The question then was whether the hotels would recognize and negotiate with the union.

The usual procedure of petitioning the National Labor Relations Board for an election and certification did not appear to be available to the union, in view of the NLRB's announced policy of refusing jurisdiction over cases in the hotel industry, irrespective of their impact on interstate commerce.[2] Nor, for the same reason, would unfair labor practice charges be processed by the Board. No similar procedure was available under the law of Florida. Although the law of Florida contains, in Section 447.03, a provision comparable to Section 7 of the Wagner Act, it provides no

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[2] This refusal by the Board to exercise its jurisdiction in this very controversy is now before this Court in No. 21, *Hotel Employees Local No. 255* v. *Leedom*, certiorari granted, No. 662, October Term, 1957, 355 U. S. 951.

machinery by which elections can be conducted nor unfair labor practices prosecuted.

Early in March the union therefore sought, by conferences with the representatives of the individual hotels which it had organized and of the Miami Beach Hotel Association, to establish a procedure by which the union could establish, by secret ballot, its right to bargain collectively for the employees of the various hotels (R. 40). When no agreement was reached the union addressed a letter to the Association requesting a conference. No answer was received. Copies were mailed to each of the hotels here involved. No answer was received. Copies of the letter were published in the Miami newspapers. (R. 40-44).[3] Finally, beginning on April 13, 1955, the union called a strike at nine hotels. Of those nine only three are now before this Court, the Saxony, the Sherry Frontenac and the Sans Souci. The strike began at the Saxony on April 13, at the Sherry Frontenac on April 16 and at the Sans Souci on April 17. The employers promptly replaced the striking workers (R. 261). The strikers, in turn, began to picket.

THE FIRST LITIGATION PHASE: ACTION BY THE TRIAL COURTS ON THE APPLICATIONS FOR TEMPORARY RELIEF (APRIL-MAY 1955)

Saxony, Sans Souci and Sherry Frontenac

The employers filed complaints for injunctions against the picketing (R. 1, 79, 524). The complaints were substantially identical. After identifying the plaintiffs they alleged that "one or two carpet-bagger labor organizers arrived in Miami Beach for the purpose of stirring up labor

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[3] The record reference is to the undisputed affidavit in the Saxony case. Substantially the same requests for negotiation were made in the other cases, as shown by affidavits or testimony, although the sequence was not always the same. (R. 217-239, 323, 419, 479, 606-623, 769, 859-862, 986, 1074.) See also the description of the history at the individual hotels at which picketing began during the third phase, at pp. 19-23 below.

discord by creating a lucrative labor organization by which said carpet-bagger organizers could reap a harvest of money from the employees of the hotels in Miami Beach through dues which the said organizers expected to charge said employees in the event they could inveigle said employees to join with said organizers in creating a labor union."

According to the complaints, the efforts of the two "carpet-baggers" in enlisting membership were a failure, but the organizers attempted to compel the owners of the Miami Beach hotels to recognize the union nevertheless in order to enable the Union to procure membership among the employees. When the employers refused to comply with these demands, the complaints alleged, the union placed picket lines in front of the hotels, carrying signs alleging that the hotels had refused to negotiate with the union, which signs, it was alleged, were false. In addition, said the complaints, the union had called meetings of the employees of the hotels and induced a minority of them to strike and cease work. The complaints also alleged instances of picket line coercion and intimidation of the remaining employees by the defendants and their "henchmen," in an effort to prevent such employees from going to work. (R. 3, 83, 525.)

The relief requested by the complaints was (1) an injunction against the picketing and (2) an injunction against "advertising or publishing any false and scandalous statements in reference to the plaintiff's business, or the plaintiff corporation, or its officers, agents, representatives and employees, or by any act or method of boycotting or injuring the same, either by picketing or otherwise." (R. 8, 87, 532.)

Of the nine cases, seven—including three now before this Court—were heard together before four judges of the Circuit Court of Dade County, Florida, on April 28-30. The cases were not consolidated, however, each judge retaining jurisdiction over the particular case which had been assigned to him (R. 11-13).

In all of the cases two major questions seemed to be pre-

sented at the hearing for temporary injunctive relief: (1) whether there was a sufficient showing of violence or intimidation to warrant an injunction, and (2) whether, if the picketing was peaceful, it was nevertheless unlawful under some "unlawful purpose" doctrine. Violent picketing could, of course, be enjoined. With respect to the second question, the law of Florida as of the date of the hearings was that picketing for the purpose of coercing an employer to coerce his employees to join a union was unlawful.[4] On the other hand, the employer's belief, however reasonable, that this was the purpose of the picketing was insufficient, if there was in fact a different purpose.[5] Picketing by non-employees for organizational purposes,[6] or by a union representing only a minority of the employees [7] was lawful. It was clear Florida law that the publication of facts concerning a labor dispute, whether or not true and irrespective of whether a "bona fide labor dispute" existed, could not be restrained in any manner.[8] Finally, as stated by the Florida Supreme Court in *Hotel & Restaurant Employees* v. *Cothron,* 59 So. 2d, 366, 369 (1952), "there is no rule, regulation or law of this State which requires a notice to the employer of the reasons for an impending strike, as a prerequisite to picketing, and the Courts are without power to supply such rule, regulation or law."

These cases seemed to establish the principles to be applied at the hearing on the applications for temporary injunctions. In accordance with those principles, the trial judges addressed themselves first to the evidence of violence and coercion. They found that, on the evidence shown, there

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[4] *Treasure, Inc.* v. *Hotel Employees Union,* 72 So. 2d 670 (1954); *International Typographical Union* v. *Ormerod,* 59 So. 2d 534 (1952).

[5] *Hotel & Restaurant Employees* v. *Cothron,* 50 So. 2d 366 (1952).

[6] *Whitehead* v. *Miami Laundry Co.,* 160 Fla. 667, 36 So. 2d 382 (1948).

[7] *Johnson* v. *White Swan Laundry,* 41 So. 2d 874 (1949).

[8] *Moore* v. *City Dry Cleaners and Laundry,* Fla. 41 So. 2d 865 (1949).

was no basis in fact for enjoining pickets on such ground in any of the seven cases.[9] With respect to the claim that the picketing could be enjoined on the ground that it was for the purpose of coercing the employers to coerce their employees to join the union the judges expressed the opinion that this raised the major question in the cases and that no ruling should be made until answers had been filed and further testimony taken (R. 14-15). Accordingly, the applications for temporary relief were denied, but without prejudice.

THE SECOND PHASE: REVERSAL BY THE SUPREME COURT OF FLORIDA (MAY 27-JUNE 1, 1955)

Saxony

Instead of waiting for answers to be filed and permitting the "unlawful purpose" question to be decided by the trial courts, the plaintiffs sought review in the Supreme Court by writ of certiorari. The first order had been entered in the Saxony case on May 5 (R. 10). On May 27, 1955, the Supreme Court, reversing the trial court, directed that a temporary restraining order issue in that case (R. 16).

The Supreme Court upheld the trial court's finding as to the absence of violence (R. 17). It went on, however, to hold that, in the absence of an answer or evidence to the contrary, the allegations of the sworn complaint should have been accepted as true (R. 18). After quoting the complaint the Court said that it was clear that, if the allegations were true, "the real purpose of the picketing was to force the employees of the Saxony Hotel to designate the union or the individual respondents as their bargaining agent, and to coerce said hotel owners to sign contracts with the union and to use said contracts as a basis to compel the employees of

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[9] The other two cases pending at the same time were heard separately and injunctions were issued based on a finding that the picketing was set in a background of violence (R. 65). These cases are not here for review.

the hotel to become members of the respondent union" (R. 21).

Picketing for such a purpose was, of course, unlawful under the prior decisions of the Florida court. If Florida law required the issuance of a temporary restraining order on the bare allegations of a complaint, despite the fact that at a hearing had been held and no evidence in support of these allegations was produced, the reversal of the trial court created no new labor law, however striking the rule of equity procedure it prescribed.

But the Supreme Court did not content itself with reversal on this ground. In the course of its opinion it set up, by way of dicta, what appeared to be entirely new standards for lawful picketing. In order for picketing to be lawful, the Court said, the union "must establish that the employees have chosen it as their representative . . . must also inform the employer of the object to be accomplished by the picketing," and must "afford to the employer a fair opportunity to engage in negotiations" (R. 18). Finally, said the Court, the picketing must convey "information concerning the *facts* of a labor dispute." (R. 20, emphasis in the original.)

The trial court on May 28, the very next day, issued the preliminary injunction which the Supreme Court directed. That injunction, in paragraph 1, enjoined all picketing at the Saxony and then, in the succeeding paragraph, went on to enjoin the defendants from publishing or causing to be published "any statements to the effect that a strike, walk-out or cessation of work is in effect at the Saxony Hotel, or that the plaintiff refuses to negotiate with defendants or affiliated organizations as the collective bargaining agent of the employees of the Saxony Hotel" (R. 32).

Sans Souci and Sherry Frontenac

While the Saxony case was pending in the Supreme Court, petitions for certiorari had also been filed in the six other cases in which temporary relief had been denied, including

the Sans Souci and Sherry Frontenac. The union, in the meantime, had filed its answers in these cases (R. 90, 535). When the Saxony opinion appeared the union therefore made an effort to meet the Supreme Court's ruling that temporary restraints must issue unless the plaintiffs' allegations were disproved, and had the cases set for further hearing on June 4. The Supreme Court was notified of this fact by telegram on June 1 and asked to withhold its order on the petition for certiorari. Its response was (as stated to the trial judge by counsel for the plaintiffs in a later hearing) "a hurried meeting by the court in which they directed the clerk to wire your Honors to enter those injunctions" (R. 111). A per curiam opinion was issued on June 1 covering all six cases. It granted certiorari as to the part of the trial courts' rulings which deferred decision on the lawful purpose question and directed that temporary restraints be issued (R. 272, 550).

On June 2, in obedience to the court's telegrams, preliminary injunctions were issued by the trial courts. The injunctions, like those in the Saxony case, restrained not only picketing but also any publication of the fact that a strike was in effect or that the plaintiff hotels had refused to negotiate with or recognize the union (R. 99, 544). This additional restraint was not inserted idly. In the petitions for certiorari the plaintiffs had complained of the fact that advertisements had been placed in newspapers in New York, Chicago, St. Louis and Cincinnati concerning the hotel strike (R. 269). The union was now apparently enjoined from placing any more of such advertisements.

THE THIRD PHASE: FURTHER HEARINGS ON THE BASIS OF THE SAXONY DECISION (JUNE-OCTOBER 1956)

Sans Souci and Sherry Frontenac

Answers had been filed in these cases on May 9. Those answers admitted the strike and the picketing but denied the other material allegations of the complaints. They af-

firmatively pleaded that the unions had sought to bring about negotiations with the plaintiffs, but the plaintiffs had refused to enter into any such negotiations, that the unions had invited the plaintiffs to hold an election by secret ballot under any fair and impartial authority in order to demonstrate the good faith of the defendant union's assertion that it represented a majority of the employees and that the picketing complained of became necessary only because the plaintiff had refused such requests. The union specifically alleged, as an affirmative answer, that the injunctive orders requested by the plaintiffs would deprive the defendant union and its members of their constitutional rights of free speech, contrary to the Constitution of the United States and of the State of Florida (R. 94-95, 539-540). By supplemental answer dated May 27 the union also urged that the requirements of Section 447.09(3) and (4) of the Florida statutes were unconstitutional under the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States (R. 97, 542).[9a]

On June 2, the same date that the preliminary injunctions were issued, the union filed motions to vacate the temporary orders in all of the six cases which the Supreme Court decided on June 1. The motions set forth that the union was "ready, willing and able" to make immediate showing of the matters required to be heard by the Supreme Court's Saxony opinion. (R. 100, 545).

The motions came on for hearing on June 4. The six cases were heard together (R. 104-262). At the hearing the union proceeded to prove what it had said in its motions it would prove. It put on the stand many of the individual employees who had designated the union as their bargaining representative (R. 120-121). Counsel for the company argued that if they had signed union cards the cards were the "best evi-

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[9a] The claim of exclusive federal jurisdiction was not made until later. See p. 31 below.

dence" (R. 129, 145), and, when the trial judge sustained this view, the union brought in the cards. It also produced the testimony of its leaders as to the efforts which had been made, prior to the strike, to negotiate with the plaintiff hotels (R. 217-239), and testimony of the workers as to their complaints and grievances. It also produced testimony concerning a secret ballot election, conducted on May 25 (R. 246-253), in which a majority of the employees of these hotels in the trades represented by the union had voted in favor of the strike.[10]

The plaintiff's testimony on the motion to vacate was limited to proof that, immediately following the strike at each hotel, the employees had been replaced (R. 260-262).

On June 16 and 17, after the conclusion of the hearing, the trial judges issued their opinions and orders dissolving the temporary injunctions. In the Sans Souci case, the trial court, limiting itself to the signed membership or designa-

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[10] This election, which covered most of the hotels here involved, was conducted by the union after the hotels refused to consent to jointly supervised elections and, in the Saxony, Sans Souci, Sherry Frontenac and Lombardy cases, after this refusal resulted in a strike. The union asked the City Council, the "President's Council" and the City Clerk to supervise an election. They declined. Finally it requested a local news commentator and columnist to act as supervisor. He consented.

20,000 leaflets were distributed, notices were posted, advertisements placed in all of the local newspapers and announcements made on local radio stations of the time and place of the election. Polling places were opened at two places in Miami Beach and one in Miami. Workers who appeared to vote were asked to identify themselves and their place of employment and given ballots, marked only with the name of the hotel, upon which they could answer yes or no as to whether they wished the union to represent them and, if necessary, to call a strike. The ballots were secret and were deposited in ballot boxes. The polls remained open for 14 hours. When closed at 10 P. M., the ballot boxes were sealed and then delivered to a central counting place, where they were counted in the presence of more than 200 persons. 2849 employees voted. Of these 2803 voted yes and 44 voted no. Two ballots were void. Objections and challenges to the voting procedure or the tally of the ballots were invited, but none were made. (R. 44-52, 247-253, 426, 481-484, 732, 745-748, 865-869, 1078).

tion cards introduced into evidence, found that some, although less than a majority, had so designated the union prior to the strike. It found that the union's representative had attempted to negotiate with the plaintiff prior to the strike and that the plaintiff knowingly had refused; that after the strike was called, additional employees joined the union or designated it as their bargaining agent; and that, in the May 25 election, a majority of those who had been working as of April 17 had voted for the union (R. 101-103).

Addressing itself to the law, the trial court first considered the application of Section 447.09(3) of the Florida Statutes Annotated to the strike. That statute makes it unlawful "to participate in any strike, walkout, or cessation of work without the same being authorized by a majority vote of the employees to be governed thereby." The court first found that the requirements of the statute had been met by virtue of the strike vote of May 25. If the fact that the strike vote had been held after the strike began was regarded to be material, the court said that it would have to consider whether Section 447.09(3) was constitutional. It concluded that the section was unconstitutional (R. 103-105).

The court then turned to the requirements for lawful picketing set forth in the Saxony opinion. Those requirements, it said, were contrary to the prior decision of the Florida

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The votes in favor of the union at the various hotels, as shown in the record, were as follows:

Hotel	*Employees Within the Union's Jurisdiction*	*Votes to Authorize Strike*	*Record Pages*
Saxony	300	225	44
Sans Souci	180	103	208,250
Sherry Frontenac	140	90	208,248
Lombardy	70	39	615,628
Miami Colonial	35	31	766,769
Delmonico		"overwhelming"	866
Robert Richter	49	33	985,992
Martinique	75	53	1072,1078
Versailles	75	57	323,330
San Marino	55	27	420,426

court in the *Cothron* case, 59 So. 2d 366, in which the Supreme Court had said that "there is no rule, regulation, or law in this State which requires notice to the employer of the reasons for an impending strike as a prerequisite to picketing." In any case, the court said, the new requirements had been met. The union had been "chosen by certain employees as the bargaining representative prior to the picketing . . . the plaintiff knew that the union desired to negotiate and that the negotiations were to be about wages, hours, and working conditions of its employees who were represented by the union . . . the plaintiff knew of the union's desire to negotiate long before the pickets were established but by the plaintiff's evasive and stalling tactics did not intend to negotiate and refused to do so." (R. 106.)

In the Sherry Frontenac case, substantially the same result was reached. In that case, decided by a different judge, the court did not discuss the *Cothron* case, but found

> "that the Defendant union, through its authorized representatives, did inform the plaintiffs of its desire to engage in negotiations as the bargaining agent of a number of employees at the Sherry Frontenac Hotel within a reasonable time prior to the date upon which picketing began . . . that the union has established that a number of plaintiff's employees, although less than a majority, had chosen the defendant union as their bargaining agent and that these employees made this choice prior to the date of the appearance of the picket line before the plaintiff's premises . . . that the representatives of the defendant union did inform the plaintiff of the object to be accomplished by the picketing prior to April 16, 1955, and that the plaintiffs did evade and stall the representatives of the defendant union to an extent that no reasonable man could conclude other than that these evasive tactics were for any other purpose than refusing to negotiate." (R. 547.)

The court went on to say:

> "The issue is clear. The purpose for the establishment of a picket line was in the exercise of the union's right of free speech—to proclaim to the world that plaintiffs refused to negotiate with the union's bargaining agent of a number of the employees at plaintiff's hotel. No evidence of coercion and intimidation by the union against either its own members, who were employees, or against non-union employees of plaintiffs who refused to cross the picket line, has been made to appear. . . . I, therefore, find that the picketing was not conducted for an unlawful purpose and that the plaintiffs have failed, by competent evidence, to sustain the allegations of its complaint 'that the picket line was placed around the plaintiffs' place of business for an unlawful or illegal purpose.' . . ." (R. 548-549).

The orders vacating the injunctions were issued on June 16 in the Sherry Frontenac case (R. 546) and on June 17 in the Sans Souci case (R. 101). Similar orders were entered at about the same time in the four other cases heard with them, but which are not before this court (see R. 277). On June 24 the Supreme Court issued orders in each of these cases to the effect that the prior petitions for certiorari—which had been filed in May seeking review of the trial courts' failure to issue restraining orders on the sworn and unanswered complaints—should be treated as a supersedeas of the orders vacating the temporary injunctions after answer and hearing (R. 274, 554).

The Lombardy and the Miami Colonial

In the meantime two other strikes had begun. The Lombardy was called out on strike on May 6 and the Miami Colonial on May 28. In both cases, complaints against picketing and other publication were filed. Both cases came on for hearing after answers had been filed and after the Supreme Court's opinion in the Saxony case.

In the Lombardy case the trial judge, simply stating that he was bound by the opinion in the Saxony case, issued a temporary injunction against picketing on May 31 (R. 646). The trial judge in the Miami Colonial case also issued a temporary injunction against picketing (R. 666) and on June 10 denied a motion to vacate it (R. 791). This judge, however, made his understanding of the Saxony opinion explicit. Contrary to his own prior views, the judge said, the Saxony opinion meant that before a union could picket it must first present to management the cards which had been signed by the employees designating the union as their bargaining agent or certify the results of some election (R. 780). This was not done. Therefore, the picketing was illegal. It was not enough to show, as the union did at the hearing on temporary injunction (R. 723-756, 766, 769), that the employees had in fact designated the union as their representative in an election prior to the strike. Nor, the judge further said in denying the union's motion to vacate, could the employees show that they had chosen the union by going out on strike. For, he said, by going out on strike they had terminated their employment and picketing thereafter was unlawful because there was no showing that the replacements wished the union to be their bargaining agent (R. 792-793).

The Delmonico and the President Madison

It was to meet precisely such objections that the union changed its tactics. The strike at the Miami Colonial was the last strike involved in the 12 cases. In the remaining cases—except the Nautilus in which picketing took place for only a day and was terminated even before a complaint was filed (R. 815)—the union first served on the employer a formal request that it join with the union in arranging for a fair and impartial election. In addition, the union's representative attempted, through personal meetings, to persuade the owner or manager of the hotel concerned to agree to such an election. When agreement on an election was re-

fused the union did not strike, but began picketing. The placards simply stated: "This HOTEL REFUSES to aid in determining its employees' bargaining agent. JOIN THE Hotel Employees Union," followed by the union's name and address (R. 828, 886). At the same time, the union distributed leaflets urging its members *not* to strike but to cross the picket line to continue work. "We realize that it is unusual for a union to request its members to work behind a picket line," the leaflets said, "but this is an unusual situation" (R. 952).

Picketing began in this fashion at the Delmonico and President Madison hotels on May 27 and May 31. Complaints for temporary injunction were, of course, filed (R. 825, 881). In its answer, in these and the succeeding cases, the union set forth that it represented a majority of the employees, that the plaintiff had refused to participate in an election, that the union had conducted an election in which a majority had authorized it to represent them, and, by way of affirmative relief, asked that the Court, if dissatisfied with that election, appoint a commissioner to hold another election (R. 835-843, 892-894).

A joint hearing was held before the same judge who had decided the Miami Colonial case (R. 832-873) and temporary injunctions against picketing were issued (R. 844, 895).

The Robert Richter and the Martinique

In these cases picketing began on June 8 and June 10, respectively. The union proceeded as it had in the prior two cases, and, indeed, it went further. Prior to beginning picketing, it also submitted to the employers sworn statements by a certified public accountant that he had examined the books and records of the union and that they showed that a stated number of the plaintiffs' employees were members of the union (R. 948, 1069). The number was, in each case, substantially more than a majority of the employees of

the hotel in the trades represented by the union: 40 out of 49 at the Robert Richter; 59 out of 75 at the Martinique.

In each case the hotel refused to bargain with the union unless it submitted the names of those whom it claimed to represent and "trustworthy proof that such employees have designated your union to represent them." (R. 949, 1071.) The union refused to do so and began to picket. Complaints and answers were filed, each supported by affidavits, and temporary injunctions were issued (R. 994, 1080). The injunctions not only prohibited the union from picketing but also from "publishing or causing to publish any statements to the effect that . . . the plaintiffs refuse to negotiate or recognize the defendants as a collective bargaining agent of the employees. . . ." (R. 996, 1081.)

The Versailles

The union took the same preliminary steps before beginning picketing at the Versailles on June 11 (R. 310-312). The case was heard on the pleadings and their accompanying affidavits. The affidavits included the transcript of a conference between representatives of the company and the union, which had taken place prior to the picketing, as well as the usual written demand for negotiations (R. 310), certification by an accountant (R. 313) and refusal by the company to negotiate unless the names of the union members were submitted to it (R. 314).

The transcript of this conference (R. 355-366) showed quite clearly that the critical point of difference between the management and the union concerned the method of demonstrating the union's majority status. The union proposed that a secret ballot election be conducted and promised that, if it did not win a majority, it would not request bargaining for the minority which it did represent and would not picket the hotel. The company, on the other hand, insisted that the only method by which the union could dem-

onstrate its majority status was by agreeing to individual interrogation of each of the employees.

The union began to picket the hotel on June 11. A complaint was filed on June 15 (R. 298). In this case, however, a temporary injunction was not issued. The trial court found that the union had established that a majority of the employees had chosen it as their representative, that the labor organization had informed the employer of the object to be accomplished by the picketing, and that a fair opportunity had been afforded to the employer to engage in negotiations. Therefore, the court concluded, the picketing met the standards set forth in the Saxony opinion and the application for a temporary restraining order should be denied (R. 379).

The San Marino

The San Marino was the last of the 12 cases now before the court to be filed. The union took the same preliminary steps at this hotel that it had taken in the immediately preceding case (R. 424-426, 454-455). When the company refused to negotiate, it began to picket on June 15. In this case, the trial court sought a method to escape the dilemma which seemed to be presented in the prior cases. After hearing, it said:

> "The plaintiff stands ready, willing and able to negotiate . . . if and when said union can furnish to the employer evidence that the union does, in fact, represent the said employees and that gets us back to the letter of June 10th to which the defendant says they did not reply because they feared at that time that their names, if supplied, would be blacklisted. . . . Since, as a Court of Equity, I believe it is important to determine, if we can, what the facts are, and very frankly I am not sure that the evidence here is such that the Court can enter a final decree.
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> "I am disposed to grant a temporary injunction restraining the picketing pending the conducting of a

secret ballot of the employees who are eligible for membership in defendant who were employed by the hotel on the 15th of June, the day the picketing began.

"The Court will appoint a Commissioner to conduct this secret ballot and will allow a period of 30 days for the completion of this." (R. 499-500.)

An order in accordance with this opinion was entered on July 11, 1955 (R. 434).

It was this case which led to the next opinion of the Supreme Court of Florida in these cases. The plaintiff filed a notice of appeal from the portion of the decree providing for the election and asked for a stay of that portion of the order. The trial court refused to issue a stay except as to the entire order. The Supreme Court, in a per curiam opinion issued on July 27, 1958, granted a stay of the portion of the order providing for an election and allowed to remain in effect the portion of the order which stayed picketing of the hotel pending such election (R. 502-5).

THE FOURTH PHASE: THE SUPREME COURT AGAIN INTERVENES (OCTOBER 1955-JANUARY 1956)

The posture of the cases at the end of September, 1955, was this. In May, the Supreme Court had reversed the trial courts, first in the Saxony case and then in six other cases headed by the Boca Raton, for withholding temporary restraints pending hearing and decision. The court had, at the same time, set forth certain new prerequisites for lawful picketing in the State of Florida. Thereafter, temporary injunctions had been issued in all of those cases. In the six cases, including two now here for review, the Sans Souci and the Sherry Frontenac, the trial courts found, after hearing, that these new prerequisites for picketing had in fact been met and vacated the injunctions. In the Saxony the injunction remained outstanding. In seven other cases now here for review, in which hearings were held after the Saxony opinion, the trial judges issued injunctions. In the Ver-

sailles, the trial judge had refused, finding that the Saxony requirements had been met. And, in the San Marino, the trial judge had ordered an election and enjoined picketing pending its conclusion. The Supreme Court was again asked to reverse in all of the cases in which the trial judges had held in favor of the union.

Sans Souci and Sherry Frontenac

In October the Supreme Court gave its answer in the Boca Raton group of cases. In its opinion (R. 277) the Supreme Court of Florida faced two problems: (1) the plain contradiction between the law of Florida prior to these cases, as expressed in the *Cothron* case, and the prerequisites for lawful picketing set forth, as dicta, in the Saxony opinion; (2) the fact that the trial courts had found that the union had met the requirements of the Saxony opinion.

The first problem the Court met "forthrightly." The *Cothron* opinion had stated that there was no Florida law requiring notice to the employer of the reason for an impending strike as a prerequisite to lawful picketing and that the courts had no authority to create one. But, the Court now said, "although there may exist 'no rule, regulation or law of this State which requires' the foregoing prerequisites, certainly honesty of purpose, fair dealing, and a sound public policy demand them." Furthermore, the Court said, Section 447.03 of the Florida Statutes gives employees the right to self-organization and collective bargaining through representatives of their own choosing, and it is therefore appropriate for the courts "to fix reasonable and fair prerequisites to the end that, rather than economic strife, there may exist peaceful accord of labor disputes so necessary in the interest of the common weal." (R. 279.)

The court then turned to the second problem: the trial courts' findings that the union had observed the rules first set forth in the Saxony. Not so, said the Supreme Court. The courts had, indeed, found that the employer had refused to

negotiate with the union. But, said the Supreme Court, the employer had a duty to treat only with the employees' true representative. A majority was not required. But what was required, in order to justify union picketing which stated that the employer refused to negotiate, was the submission to the employer prior to the picketing of "some evidence of substantial character that at least some of the employees have chosen it as their representative." (R. 281.) In these cases, the union had, the court said, resorted to the coercive effect of picketing without first establishing, by such evidence, that it had in truth and in fact been designated by any of the employees (R. 282). The picketing was therefore unlawful, and the orders vacating the preliminary injunctions were quashed (R. 283).

The Versailles

The situation in the Versailles case was somewhat different. Before beginning picketing in that case, the union had offered, in conference with the employer, to submit to a secret ballot election. It had agreed that, although the Florida law appeared to give it the right to represent a minority and to picket if the employer refused to bargain with the union for its members, it would not seek such bargaining, or picket, if it did not obtain a majority in such an election. When the employer refused this proposal, the union submitted to him a sworn statement by a certified public accountant as to the number of the hotel's employees who had joined the union. Only when the employer refused to negotiate after this submission did the picketing begin. Furthermore, the trial court had found that the employees as to whom the certified statement had been submitted constituted a majority of the hotel's employees in the trades represented by the union.

These distinctions apparently did not make any difference. On December 14, 1955, the Supreme Court issued a per curiam opinion reversing the trial court's order denying tem-

porary relief and directing that an injunctive order be entered, on the authority of the Court's Boca Raton opinion (R. 389).

The San Marino

The same result necessarily followed with respect to the order for a secret ballot election which had been entered in the San Marino case. There was no precedent, the Supreme Court said, for the appointment of a commissioner to conduct an election. The union's claim that it was desirable to have a secret ballot in order to protect its members against "blacklisting" had no vitality because the union had, in fact, filed in the case some cards signed by its members. Proof of the union's status as a representative of the employees was part of the union's case, and "the parties should present their own case and they should not impose upon the Chancellor the burden of presenting it for them." (R. 507-511.)

THE FIFTH PHASE: FINAL ORDERS IN THE TRIAL COURTS (NOVEMBER 1955-FEBRUARY 1956)

All of the judgments of the Florida Supreme Court in the prior phases of the litigation were on preliminary injunction and, hence, could not be reviewed in this Court. (*Montgomery Bldg. Trades Council* v. *Ledbetter Co.*, 344 U. S. 178 [1952]). Under the Boca Raton opinion, proof at this stage of the union's representative status as of the date picketing began was immaterial. There was no course of action open to the union, therefore, other than to return to the trial courts and obtain final orders as the basis for a new appeal to the Florida Supreme Court and, ultimately, to this Court.

This was done. Pursuant to stipulation, final orders were entered in all of the cases (R. 53, 291, 394, 515, 570, 654, 797, 821, 873, 903, 1001, 1085). Briefs were filed in the Florida Supreme Court and, by the summer of 1956, all of the cases were ready for final disposition.

THE SIXTH PHASE: THE FONTAINEBLEAU (FEBRUARY 1957)

The Supreme Court did not immediately affirm the final orders which had been entered in these cases pursuant to its prior opinions. It held the cases and, in the meantime, decided still another case in which a trial judge had refused temporary relief. That case was ***Fontainebleau Hotel Corp.*** v. ***Hotel Employees Union,*** 92 So. 2d 415. It was decided on February 1, 1957. Although the case is not before this Court because the order directed by the Florida Court was not a final one and the dispute has since been settled, the opinion of the Supreme Court of Florida is significant because it provided the basis for that Court's final affirmances in these cases.

The picketing in the Fontainebleau case began in December, 1956, after the Supreme Court's second Boca Raton opinion had been issued. The union did its best to comply with the second revised set of standards for lawful picketing which had been established in that opinion. The trial court first issued a restraining order—as commanded in the Saxony opinion—on the basis of the sworn complaint. It then held a hearing and, on January 30, 1956, found that the union had in fact complied with the Boca Raton standards. It therefore dissolved the temporary restraint.[11]

The Florida Supreme Court reversed. It is difficult, however, to state with confidence precisely what it held, other than that picketing should be enjoined "under the circumstances presented." The Court began by stating that the trial court was confused about what the Supreme Court had in mind in the Boca Raton case when it said that the union, prior to a strike, should show that it represented "at least some of the employees." The court now said that this expression was "a mere expletive of the situation before the

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[11] These facts are set forth in the Supreme Court's opinion, which is reprinted as Appendix A to this brief.

court" and had no relevance to this case. A majority vote *was* required, both by Federal law and state law, the Court said, before a strike could be called.[12]

But the requirement of a majority, the Court went on, did not apply to picketing. As to picketing, the law was that it could not be initiated:

> "for spite or for reasons other than to accomplish a lawful purpose and then the law, order and decency require that it be done in an atmosphere conducive to reaching a result that is fair to the employer, the employees and the public. If attempted in an atmosphere of violence, insinuation, bad faith, deception, farce or damned-if-I-don't-show-you spirit, it would not be recognized as a means of adjusting labor disputes. Satisfactory, fair or equitable judgments never emerge from such an atmosphere. Picketing conducted in such an environment, as we stated in Sax Enterprise v. Hotel Employees Union, Local No. 255, supra, is nothing more than a 'species of coercion traveling under the guise of free speech for the purpose of enjoying constitutional immunity.' It was widely at variance from the pattern confronting the court in A.F.L. v. Swing, supra."

Having thus stated the law governing picketing, the Court turned to the factual record before it. All of the correspondence between the parties, as well as the evidence taken in the trial, the Court said, "exhibit bad faith, a lack of respect one for the other, a tense feeling between them and a disposition to haggle over the issues if there were any." It then went on to examine the particular charges which the plaintiff made concerning the picketing. In doing so it seemed to reverse the normal burden. The trial court had

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[12] There is, of course, no such requirement under Federal law, and the states are forbidden to impose one in an industry affecting commerce. *Auto Workers* v. *O'Brien*, 339 U. S. 454.

vacated the injunction after hearing and had made findings of fact. The Supreme Court's apparent assumption was that this decision should be reversed unless the union could show that it was entitled to relief.

On this assumption the court pointed out that "for all the record shows" the placard carried by the pickets was a misrepresentation and was unfair. The evidence, it said, supported most of the plaintiff's charges: it was not "conclusively shown" that any bona fide labor dispute existed; it was not shown that there was any dissatisfaction with working conditions at the hotel; the picketing was for the purpose of obtaining recognition, and was accompanied by acts of "violence or near violence"; and, finally, the "gravamen of the picketing is not shown to have originated within the confines of petitioner's hotel."

The Court concluded its opinion by stating that the requirements for picketing discussed in the opinion applied only to picketing by representatives of a union. Any number of employees, even less than a majority, the court said, could lawfully picket if, prior to beginning such picketing, they complied with the prerequisites set forth in the Saxony opinion. However, the Court said, that rule was applicable to employees only. The union as such and, as distinguished from the individual employees, could not engage in picketing which used members of the union who were not employees of the subject employer "under the circumstances presented here."

This concluding paragraph of the Florida Supreme Court clearly meant that all of the extensive reasoning about the requirements for lawful picketing which had been set forth in the Saxony and Boca Raton opinions was not applicable in many of the other pending cases. In many of those cases the union sought to protect its members, and did not ask them to strike. Instead, it submitted a certificate as to the number, but not the names, of its members, and asked for a secret ballot election. The subsequent picketing in such

cases would not be done by the members of the union employed in the hotel being picketed—they were still working —but by other union members.[13]

THE SEVENTH PHASE: FINAL DECISIONS BY THE FLORIDA SUPREME COURT (MARCH 15, 1957)

Finally, on March 15, 1957, the Supreme Court decided all of the instant cases. The Court did not decide them, however, on the basis of its prior Saxony or Boca Raton opinions. To the contrary, in identical per curiam opinions, it affirmed the final order of the trial courts in each case on the authority of the Fontainebleau case. (R. 57, 295, 399, 520, 574, 657, 801, 823, 878, 908, 1006, 1090.)

Much of the Fontainebleau language was, of course, inapplicable to these cases. In none was there any finding of violence or "near violence." In some there was a finding, unreversed by the Supreme Court of Florida, that the union represented a majority of the employees and that it had afforded to the employer an opportunity to engage in negotiations before it began picketing. In others there was considerable evidence of dissatisfaction with wages or working conditions. To the extent that meaning can be derived from the fact that the Supreme Court of Florida decided all of these cases on the basis of the Fontainebleau opinion, therefore, it must be assumed that the portion of the opinion referred to was the portion distinguishing between picketing by employees and picketing by a union. The Saxony and Boca Raton requirements applied to employee picketing. But union picketing was now subject to the requirement, unstated in the earlier opinions but set forth in Fontainebleau, that it "be done in an atmosphere conducive to reaching a result that is fair to the employer, the employees and the public," not in an atmosphere of "insinuation, bad faith, deception, farce, or damned-if-I-don't-show-you spirit."

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[13] The records in the cases are actually silent on this point, since, until Fontainebleau, no one thought it significant.

THE DISPOSITION BY THE FLORIDA COURT OF THE FEDERAL QUESTIONS

Except for a brief reference to *A.F.L.* v. *Swing* in the Fontainebleau opinion, the Florida Supreme Court ignored the union's contention, which had been made from the beginning in each of these cases, that the injunctions against peaceful picketing, and against publication in any medium of the fact that a dispute existed, violated the union's right to free speech. The union had raised this defense in its first responsive plea in each case.[14] In its assignments of errors [15] and in its brief to the Florida Supreme Court [16] the union set forth its contention based upon the First and Fourteenth Amendments, both as to the injunctions against picketing and the restraint against other publication. It also set forth, in its assignments and its brief, the contention that the final decrees violated the Fourteenth Amendment because they were based on "unsubstantiated findings" and went beyond the scope of any findings "insubstantial or otherwise" (see, e.g., R. 55-56). The Supreme Court of Florida rejected these contentions by affirming on the authority of Fontainebleau.

The union also raised, in each case, the contention that the Florida courts lacked jurisdiction because of the federal regulation of labor relations in industries affecting commerce. This was done, in most of the cases, by supplemental answer filed on June 28, 1955.[17] In the stipulations

[14] R. 28, 95, 321, 418, 540, 590, 787, 835, 843, 962, 1067. No specific reference was made to the constitutional right of free speech in the answer in the Nautilus case since the union alleged that the case was moot. (R. 814). The issue was raised, and not objected to, however, in the union's assignment of errors and brief in the Supreme Court.

[15] R. 54, 292, 397, 516, 655, 799, 823, 875, 905, 1003, 1086.

[16] R. 58.

[17] R. 33, 285, 334, 431, 565, 648, 845, 896, 996, 1082. The supplemental answer raising the preemption issue is apparently omitted from the record in the Miami Colonial and Nautilus cases. In both cases however, it was stipulated, as in the other cases, that an affidavit could be offered in support of this defense, subject to objection as in the other cases.

which the parties entered into pursuant to which final decrees were entered, it was agreed, that the union would produce a witness who would testify, in accordance with an attached affidavit, that the hotel was engaged in a business affecting interstate commerce and that such testimony, if produced, would be objected to on the ground that it was immaterial and irrelevant.[18] In each case the trial court, in entering its final decree, sustained the objection.[19] The union in each case set forth in its assignments of errors its contention that this ruling constituted error.[20] The question was briefed by the parties before the Supreme Court of Florida. The union contended that the state courts were without jurisdiction, relying upon the preemption cases in this court.[21] The employers contended that, because of the refusal of the National Labor Relations Board to take juris-

[18] R. 36, 287, 568, 650, 794, 819, 847, 898.

In the Versailles, Robert Richter, Martinique and San Marino cases the procedure was somewhat different. In the Versailles and Robert Richter, the plaintiffs moved to strike the supplemental answer alleging exclusive Federal jurisdiction on the grounds that the matters alleged therein were immaterial and insufficient to state a defense (R. 336, 999). The parties stipulated that the affidavits, including the affidavit as to commerce, could be considered by the trial court on final hearing (R. 393, 1000). The trial court ignored both the answers and the motions to strike them in entering its final decrees (R. 393, 1000).

In the Martinique there was no motion to strike, and the parties stipulated that the Chancellor could issue a final decree on the basis of the affidavits on file, including the affidavit as to interstate commerce in support of the supplemental answer (R. 1084).

In the San Marino, the initial hearing on temporary injunction was held after the supplemental answer had been filed and the Chancellor found that its allegations were not supported by evidence (R. 434). In his final decree, however, the supplemental answer was stricken together with the portion of the affidavit, previously filed, as to interstate commerce (R. 515).

In all cases, error was identically assigned and the question briefed on its merits before the Supreme Court of Florida.

[19] R. 53, 291, 570, 654, 797, 821, 873, 908.

[20] R. 55, 293, 397, 516, 573, 656, 799, 823, 875, 906, 1003, 1086.

[21] R. 62.

diction, the state courts retained jurisdiction.[22] The Supreme Court of Florida disposed of the issue by ignoring it.

SUMMARY OF ARGUMENT

1. The rules governing the right to engage in peaceful picketing established by the Florida court in these cases, even if they be assumed to *be* the rules, are contrary to the constitutional limitations set forth in *Thornhill* v. *Alabama,* 310 U. S. 88, and *A.F.L.* v. *Swing,* 312 U. S. 321.

The instances in which this Court has, since *Thornhill,* sustained limitations of peaceful picketing, which genuinely contained a substantial element of communication to the public, have involved picketing engaged in for the purpose of effectuating a result contrary to the law or the public policy of the state. In such cases, the Court has held that, even if an element of communication is involved, the non-speech elements involved in the use of picket signs justify a prohibition of picketing designed to accomplish such purposes. Florida here has used "unlawful purpose" language but the rules it established, conditioning the right to picket peacefully, do not relate to the action sought to be induced by the pickets. They are, rather, rules specifically designed to limit the use of picket signs as a method of communication irrespective of the propriety of the purpose of the pickets.

The rules are themselves manifestly unfair. But the critical question is not the wisdom or fairness of the rules but the power of the state to establish such rules.

In these cases the action by the employers which the union sought to induce by picketing was not contrary to, but in conformity with, the declared public policy of the state of Florida, and the picketing was truly used as a method of communication to the general public. Under the decisions of this Court, therefore, Florida was without power to pre-

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[22] R. 77-78, 1040-1043.

scribe preconditions to the use of this particular method of disseminating information.

2. The injunctions in six of these cases also specifically prohibited the union from publishing in any form what are, indisputably, the facts of this dispute. This restraint is plainly unconstitutional.

3. The course of decision in these cases makes it clear that the Supreme Court of Florida would not permit picketing by this union in this dispute even if the union complied, as it did, with the law as announced by that Court. In so doing it denied the union both due process and the equal protection of the laws.

The Florida court has the right, of course, to modify existing precedent. But it is plain that the court here has not judged the union according to the rules but has changed the rules, again and again, in order to achieve a pre-determined result. Both the result and the process by which it is achieved violate the constitution.

4. The injunctions against picketing here constitute an exercise of state power which cannot constitutionally stand against the federal preemption of the field contained in the National Labor Relations Act. There can be no serious dispute as to the fact that these hotels are engaged in an industry affecting interstate commerce. The refusal of the National Board to exercise its jurisdiction in that industry does not, as this Court held in *Guss* v. *Utah Board,* 353 U. S. 1, re-vest jurisdiction in the states. And it is clear that the activity which Florida here enjoined is protected by the federal statute.

ARGUMENT

I.

THE INJUNCTIONS AGAINST PICKETING IN THESE CASES VIOLATE THE PETITIONER'S RIGHT OF FREE SPEECH

In *Teamsters' Union* v. *Vogt,* 354 U. S. 284, this Court reviewed its prior decisions concerning the extent to which peaceful picketing was protected by the Fourteenth Amend-

ment as a form of communication. Those decisions, the Court said, "established a broad field in which a State, in enforcing some public policy . . . could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy." 354 U. S. at 293. This case presents the question of whether there are any limits upon the policy which the state can so enforce or whether, as the dissent in the *Vogt* case said, state courts are now free to enjoin peaceful picketing "for any reason other than a blanket policy against all picketing." Id. at 297.

The answer to this question, we hope, has already been suggested by this Court's per curiam reversal of the Supreme Court of Kansas in *Teamsters' Union* v. *Newell,* 356 U. S. 341, just as the *Vogt* opinion was foreshadowed by the dismissal of the appeal in *Pappas* v. *Stacey,* 350 U. S. 870. The simple citation to *"Thornhill* v. *Alabama,* 310 U. S. 88, 98, *Third"* in the *Newell* per curiam, however, is something less than a full answer.

In the present cases there is no statutory ban against all picketing, such as that discussed in *Thornhill* v. *Alabama.* Nor has Florida in these cases established such a ban by judicial fiat. It is possible to urge—and we do so urge in Part III of this argument—that the sequence of events here shows a determination by the Florida Supreme Court that this union shall not be permitted to picket at the Miami Beach hotels, irrespective of the facts. If we are correct in that contention the injunctions in these cases cannot stand, not so much because they were entered pursuant to a policy against all picketing but because this union is entitled to have the same rules applied to it, and applied with at least some semblance of due process, as apply to others.

But it is not necessary for the Court to go that far. Even if we assume that the rules limiting peaceful picketing set forth in the Florida court's successive opinions are, in truth, the rules and if we assume that they had been in effect from

the beginning, still, we submit, they cannot constitutionally stand.

We begin by making a distinction which has too often been obscured in the cases—the distinction between picketing for a purpose which the state says is against public policy and picketing for a purpose which the state does not regard as against public policy but for which the state says it is against public policy to picket.

Most of the cases in which this Court has limited the doctrine first stated in *Thornhill* v. *Alabama* and *A.F.L.* v. *Swing,* 312 U. S. 321, dealt with the former—that is, picketing to accomplish an objective which the state would consider unlawful or against public policy if accomplished. Thus in *Giboney* v. *Empire Storage and Ice Co.,* 336 U. S. 490, the objective of the picketing, if accomplished, would have constituted a violation of Missouri's valid anti-trust law. In *Hughes* v. *Superior Court,* 339 U. S. 460, the Court regarded California as having a policy against the proportionate hiring of Negroes. In *Electrical Workers* v. *NLRB,* 341 U. S. 694, the objective of the picketing was to induce a secondary strike violative of the National Labor Relations Act. A similar policy was involved in *Carpenters Union* v. *Ritters Cafe,* 315, U. S. 722. In *Building Service Employees* v. *Gazzam,* 339 U. S. 532, the objective of the picketing was the coercion by the employer of the employees in their selection of a bargaining representative, coercion which the state had declared unlawful. *Pappas* v. *Stacey,* 350 U. S. 870 and *Teamsters Union* v. *Vogt, Inc.,* 354 U. S. 284, presented the same state policy. *Plumbers' Union* v. *Graham,* 345 U. S. 192, involved a picketing which the state had found was intended to accomplish a result in violation of the state's "Right to Work" law.

The test in all of these cases was the objective sought to be achieved by the picketing. If the objective were unlawful, no matter how induced, or even if not unlawful, would violate a particular and defined public policy, whether an-

nounced by the legislature or the courts, the picketing could be said to be for an "unlawful purpose."

An "unlawful purpose" does not, of course, justify a restraint on every kind of communication. See *Yates* v. *United States,* 354 U. S. 298. But picketing, as this Court has said, may involve "more than publicity." It can cause, and in most of the cases with which this Court has had to deal, has caused, employees of suppliers, trucking companies, etc., to refuse to deliver or haul goods. Or it can cause employees to refuse to go to work. When the picketing is done for such purposes, or has such effect, it operates as a "signal" to other workers, as well as a method of communicating information to the public.

In every case therefore, this Court said in *Vogt*, the question was one of reviewing "the balance struck by a State between picketing that involved more than 'publicity' and competing interests of state policy." 354 U. S. at 290.

In no case in which there could fairly be said to be any substantial element of communication [23] in the picketing has this court approved a restraint on picketing based on a state policy specifically related to picketing. If a state sought to enjoin picketing because of the absence of a labor dispute, or because the men carrying the picket signs were not employees, the Court struck down the restraint as a restraint on communication. *A.F.L.* v. *Swing,* 312 U. S. 321; *Bakery Drivers Local* v. *Wohl,* 315 U. S. 769; *Cafeteria Union* v. *Angelos,* 320 U. S. 293.

The law of Florida prior to these cases was fully in accord with these principles. See the cases cited *supra* at p. 10. And the actual holding in the Supreme Court of Florida's first decision here, the Saxony opinion, was also in accord. In that case the court held that an injunction should issue because the sworn complaint alleged that the objective sought to be achieved by the picketing was that the em-

[23] Cf. *Carpenters Union* v. *Ritter's Cafe,* 315 U. S. 722.

ployer coerce his employees to join the union—action which would be contrary to the state's policy, no matter how induced. In the absence of an answer or contradicting evidence, the Court said. this allegation had to be taken as true. Whatever one may think of this as adjective law, the substantive holding simply reiterated existing law well within the permissible limits set by this Court in *Gazzam* and followed in *Vogt*.

But as dictum the Florida Court for the first time set forth rules, not as to "the manner in which picketing is conducted or the purpose which it seeks to effectuate" (*Hughes* v. *Superior Court, supra,* at p. 465), but concerning the preconditions which must be met by picketers, whatever their purpose. This was the crucial step. Once embarked on this course the state was not enforcing any public policy other than a policy as to picketing, however often the language of "unlawful purpose" might thereafter be recited (R. 282). In Saxony the conditions stated by the court were that the union represent some members working in the establishment, that it inform the employer of the objective of the picketing and that it afford him an opportunity to negotiate (R. 18). In Boca Raton the court added another prerequisite: that the union submit proof to the employer that it represented some members before beginning to picket (R. 281). The Versailles case made it clear that this proof had to be in the form of a submission of the names of the members. Finally, in Fontainebleau, the Court said that those rules only applied when employees did the picketing. Union picketing was subject to the requirement that it could not be done in a "damned-if-I-don't-show-you spirit."

It is, of course, easy to attack the content of these rules. They are plainly designed to compel a union to commit suicide as an organization as a condition for the right to begin picketing in support of a demand for recognition. The information which Florida required that the union supply is the information which any employer needs in order to

enable him to discharge the adherents of the union at his convenience and to apply the now fortunately infrequently-used technique of the blacklist. It is the rare worker who, unprotected by the National Labor Relations Board, will willingly sign up with an unrecognized union if he knows that the union will deliver his name to the employer.

But the critical question for this Court is not whether Florida's rules as to the preconditions for peaceful picketing or wise or fair but whether Florida has the power to make rules of this kind. Once the initial premise is granted that a state can regulate and license, if you will, the right to picket peacefully without reference either to the purpose sought to be achieved or the manner in which the picketing is conducted, then as far as the constitution is concerned the sky is the limit.

This Court has never heretofore granted that premise. Of the cases in which state restraints on peaceful picketing have been sustained, only *Teamsters Union* v. *Hanke,* 339 U. S. 470, can even be argued to support the premise. And in that case there was no opinion of the Court.

In the present cases there are none of the ingredients which this Court in prior cases found to be sufficient to justify the imposition of restraints on communication by picket signs. The objective of the pickets—recognition and collective bargaining at the most, in some cases only agreement to conduct an election to determine if a majority wanted collective bargaining—is not contrary to any policy of the state of Florida. It would not have been a violation of any policy of the state for the Versailles, for example, to agree to a secret ballot election or, indeed, to sign a collective bargaining agreement with the union which a majority of its employees had in fact joined. What violated the policy of the state was the use of peaceful picketing to achieve those objectives without meeting the specific conditions for picketing established by these cases.

Nor, in these cases, can it possibly be argued that the

picketing was not truly communication. The only effect of the picketing, as alleged by the complaints, was that "members of the public are being deterred . . . from patronizing" the struck hotels (R. 7). Suppliers, truck drivers, and indeed union employees, did not regard the picketing as a "signal" and all crossed the picket lines. The fact that injunctive relief was sought, not only against picketing in the vicinity of the hotels, but also against any publication of statements as to the labor dispute, makes it crystal clear that the result sought to be achieved by the plaintiffs, and in fact achieved pursuant to the injunctive orders entered, was not relief against picketing because it involved more than publicity, but against publicity itself. The injunctions against publication are, of course, unconstitutional. But we see no basis for distinguishing in these cases between the publicity achieved by publishing statements in a newspaper and the publicity achieved by carrying signs. Both forms of dissemination were here used for publicity purposes and both were enjoined because of the effect which they had as communication.

The decisions of this Court still require that, in order to restrain such picketing because of its potential non-speech elements, the state demonstrate that the objective of the picketing, if achieved, would violate some specific state policy. They do not permit the state to establish, as Florida has done here, preconditions for the peaceful display of honestly written picket signs. The fact that every opinion of this Court dealing with the free speech-picketing question in the last 15 years has rejected the claim of constitutional protection, has, perhaps understandably, led some courts to believe that so long as they use the magic words "unlawful purpose," any kind of restraint on peaceful picketing will be sustained.[24] Other courts have correctly as-

[24] *Godchaux Sugars, Inc.* v. *Chaisson*, 78 S.W. 2d 673 (La. 1955); *Klibanoff* v. *Retail Clerks*, 258 Ala. 479, 64 So. 2d 393 (1953).

sumed that the cases limiting the doctrine of *Thornhill* and *Swing* mean no more than what they say and have held unconstitutional requirements that a union show a majority before using the picket line.[25] It would not be inappropriate, we submit, for this court explicitly to confirm their assumption.

II.

THE INJUNCTIONS AGAINST OTHER PUBLICATION WHICH WERE ISSUED IN SOME OF THESE CASES ARE CLEARLY INVALID

As noted in the Statement the trial courts in six of these cases[26] enjoined not only picketing but also enjoined the union from making any publication — whether through handbills, advertisements or otherwise—of the fact that there was a strike or that the hotel refused to negotiate or recognize the union. This was not the kind of "argumentative excess" which "astuteness may discover" in reading the terms of the injunction against picketing, to which this court referred in the *Vogt* case, 354 U. S. at 295. On the contrary, it was a separate and distinct restraint, wholly unrelated to the restraint against picketing. Nor was the injunction against publication sought idly. As the record shows, one of the plaintiffs' real concerns was to prohibit advertisements in newspapers in other cities (R. 269, 314, 951) and handbills (R. 409-412, 1052-1055).

There can be no serious contention that the publication which was enjoined by the trial courts would be false or libelous (even if it be assumed that false publication can constitutionally be enjoined). There was a strike at the

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[25] *Baldwin* v. *Arizona Flame Restaurant*, 313 P. 2d 759 (Ariz. 1957); *Gilbertson* v. *Culinary Alliance*, 204 Ore. 326, 282 P. 2d 632 (1955).

[26] The injunctions in the Lombardy (R. 646), the Miami Colonial (R. 666), the Nautilus (R. 817), the Delmonico (R. 844), and the President Madison (R. 895) enjoined only picketing. The injunction in the San Marino (R. 435) at which no strike took place enjoined only publication that a strike existed.

Saxony, the Sans Souci and the Sherry Frontenac. The plaintiffs admitted it, and indeed asserted it. The plaintiffs did deny, but the trial courts in several cases found to the contrary, that the hotels refused to negotiate with the union. There can be no question that they refused to recognize the union.

The injunctions forbade the union to publish, or to procure the publication, of these facts in any manner. We can think of no justification which would possibly sustain the constitutionality of that portion of the injunctive orders. *Lovell* v. *Griffin,* 303 U. S. 444; *Near* v. *Minnesota,* 283 U. S. 697.

III.

THE PATTERN OF DECISIONS OF THE FLORIDA SUPREME COURT REVEALS A COURSE OF CONDUCT DESIGNED TO DEPRIVE PETITIONER AND ITS MEMBERS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAWS AS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION

The prerequisites to lawful picketing set forth by the Florida Court in these cases are, as we argue above, unconstitutional. But in these cases the union, without waiving its constitutional objections, sought nevertheless to comply with these prerequisites. Over a two-year period it found that it was impossible to do so. This was not a product of the constitutional infirmity of the regulations themselves, but the product of what can only be described as law on a treadmill. Every time the Supreme Court of Florida came up with a new requirement the union sought to meet it. And, when it did, the Florida Court found that some new requirement existed, or was implicit in its earlier set of rules.

We do not contend that the United States constitution proscribes the right of state courts to modify established law. We recognize that "in general, the decision of a [state] court upon a question of law, however wrong and however contrary to previous decisions, is not an infraction of the

Fourteenth Amendment merely because it is wrong or because earlier decisions are reversed." *Patterson* v. *Colorado,* 205 U. S. 454; *Milwaukee Electric Railway & Light Co.* v. *Wisconsin,* 252 U. S. 100.

We do contend, however, that the Fourteenth Amendment to the Constitution does require that parties be given an opportunity to comply with the law and that they be permitted to know what the law requires so that they may rationally conduct their lawful affairs. In Justice Frankfurter's words, due process "expresses a demand for civilized standards of law." *Malinski* v. *New York,* 324 U. S. 401, 414. While there is nothing uncivilized about a legal standard which permits an appellate court "to alter or correct its interlocutory decision upon a first appeal when the same case, with the same parties, comes before it again," *Moss* v. *Ramey,* 239 U. S. 538, 547, when cases "between private parties [are] arbitrarily and capriciously decided, in violation of settled principles of law and contrary to undisputed facts . . . the judgment may be in violation of the Fourteenth Amendment." *Williams* v. *Tooke,* 108 F. 2d 758, 759 (CA 5). Constantly changing legal standards which cannot be met or relied upon are irrational and, in a real sense, "uncivilized."

This Court has long recognized that the "benign provisions of the Fourteenth Amendment" will not countenance state laws which are "applied and administered by public authorities with an evil eye and an unequal hand," or legal requirements "applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the Petitioners, as to all other persons." *Yick Wo* v. *Hopkins,* 118 U. S. 356, 373.

The facts in these cases demonstrate, we submit, the applicability of this rule. When the picketing here began in

the first cases it was not in violation of any existing Florida law. The Supreme Court then, in Saxony, established certain procedural prerequisites which, it said, must be complied with before any picketing began. The union then showed, in the trial courts, that in fact it had met those prerequisites even though they were unknown at the time. And, as it organized new hotels it carefully met each of the preliminary steps specified in the Saxony opinion. Again the Supreme Court intervened and, in Boca Raton, added a new prerequisite for the initiation of lawful picketing. Since this preliminary step had not been taken before the picketing began, the Supreme Court said, all picketing in those cases should now be enjoined. And then when still another dispute arose and the union carefully abided by the last set of rules as to the necessary preliminaries, the Florida Court said that those rules only applied to employee picketing; a wholly new standard applied to picketing by non-employees. Since the picketing was begun with non-employees, all picketing must be restrained in the future. And then, finally, it affirmed final orders enjoining picketing in all of the cases on the basis of this new announcement.

The rules themselves, as we have urged above, are constitutionally void. But even if we were to assume that such rules might otherwise be valid, still the judgments here should be reversed. For the sequence of events makes it clear that the announced rules were not in fact the real rules —the real rule was that, irrespective of the law, and, indeed, irrespective of the facts, picketing by this union at the Miami hotels was to be enjoined.

In other areas this Court has not been reluctant to pierce the veil of rationalization offered to justify an unspoken but apparent determination to reach desired, but forbidden results, whether set forth "ingeniously or ingenuously." *Smith* v. *Texas,* 311 U. S. 128, 132. Nor should it, we submit, be reluctant to do so here.

IV.

THE INJUNCTIONS HERE ISSUED ARE INVALID UNDER THE COMMERCE AND SUPREMACY CLAUSES OF THE CONSTITUTION

The action of the Florida Supreme Court in sustaining, over petitioner's objections, the exercise of state power represented by the injunctions against picketing in these cases is plainly contrary to the decision of this court in *Guss* v. *Utah Labor Relations Board,* 353 U. S. 1(1957). There can be no serious dispute that these hotels are engaged in a business which affects interstate commerce. There are undisputed affidavits to that effect which the trial courts held to be irrelevant. Furthermore, this Court can take judicial notice of the fact that there is now pending in this Court a case in which it is conceded by the National Labor Relations Board that the business of these hotels comes within the statutory definition of commerce contained in the National Labor Relations Act. *Hotel Employees Union* v. *Leedom,* No. 21 this Term.

It is true, of course, that the National Labor Relations Board refused to take jurisdiction over the present cases. But this refusal, as in the *Guss* case, was based upon a claimed discretionary right to refuse jurisdiction, not upon any contention that the labor relations practices of these hotels are not governed in substance by the National Labor Relations Act.

In the *Guss* case, this Court held that the refusal of the National Labor Relations Board to exercise jurisdiction does not confer jurisdiction upon the states to regulate labor relations matters which they would be forbidden to regulate, under the Commerce clause of the Constitution as implemented by the National Act, if the Board would exercise jurisdiction. This case comes squarely within the terms of the *Guss* decision. Indeed, it provides a much clearer case of conflict with federal law than was presented in *Guss.*

In the *Guss* case, as well as in the two companion cases, the party proceeded against under state law claimed that the state had no jurisdiction because the conduct sought to be enjoined was also a violation of federal law. This Court sustained that contention. In this case, the party proceeded against in the state courts—the union—contends, without fear of substantial contradiction, that the activities which Florida has restrained are activities which are protected against interference by the terms of Section 7 of the National Labor Relations Act. This case, in short, is not *Garner* v. *Teamsters Union,* 346 U. S. 485, but *Auto Workers* v. *O'Brien,* 339 U. S. 454. Or, more specifically, it is *Youngdahl* v. *Rainfair, Inc.,* 355 U. S. 131.[27]

This distinction is particularly emphasized by the fact that throughout the Miami controversy the union has used every possible effort to procure the intervention of the National Labor Relations Board. It filed petitions with the Board to conduct secret ballot elections. It filed charges of unfair labor practices against the employers. And it is now engaged in an effort, through litigation, to compel the Board to exercise its plain statutory mandate to apply the National Labor Relations Act to these disputes.

This union does not seek refuge in a "no man's land." It has no desire to avoid regulation by either state or federal bodies. It seeks only to protect rights guaranteed to it by Federal statute and, indeed, until this litigation, by Florida law.

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[27] The record does not specifically disclose in each case whether the pickets were striking employees or other members of the union. It is a fair assumption, however, that in the cases in which the union did not call a strike and, because of fear of reprisals, refused to disclose the identity of its members employed by the hotel, the pickets were not employees of the hotel picketed. As we read in *Youngdahl* v. *Rainfair, Inc.*, supra, however, this is immaterial. But cf. *NLRB* v. *Babcock & Wilcox Co.*, 351 U. S. 105.

CONCLUSION

For the reasons above set forth, the decisions of the Florida Supreme Court in all of these 12 cases should be reversed and the injunctive orders affirmed by it should be vacated.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1957 EN BANC

CASE NO. 28,074

FONTAINEBLEAU HOTEL CORP., A FLORIDA CORPORATION,

Petitioner

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), AND CLARENCE L. SMITH, ALBERT H. BERLIN AND HENRY K. MICHEL, AS BUSINESS AGENTS AND OFFICERS THEREOF.

Respondents

Opinion filed February 1, 1957.

A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF DADE COUNTY, WILLIAM A. HERIN, JUDGE.

TERRELL, C. J.

December 21, 1955, petitioner filed a sworn petition in the Circuit Court of Dade County on the basis of which temporary restraining order was directed to respondents commanding them to desist from picketing the Fontainebleau Hotel. January 30, 1956, after answer of defendants was filed, the cause came on for hearing before the chancellor; evidence was taken and the temporary restraining order was dissolved. We are confronted with a petition for certiorari to review and quash the order dissolving the temporary injunction.

Petitioner first contends that respondents did not represent its employees, that petitioner was not notified of any labor grievance prior to the picketing, nor was it given the object to be accomplished by the picketing or a reasonable time to accept or reject the union demands.

Sections 447.01 (1) (2), 447.03 and 447.09 (3) (4) (11), Florida Statutes 1955, are relied upon to support petitioners grounds for relief. Section 447.01(1)(2) is a statement of policy with reference to the regulation of labor unions, their agents, employees and other representatives. Section 447.03 guarantees laborers the right to organize and join a union, to bargain collectively, including acts for mutual aid and protection. Section 447.09(3)(4)(11) preserves the right of franchise but makes it unlawful to participate in any strike, walkout or cessation of labor or continuation thereof unless authorized by a majority vote of the employees affected. It requires elections to strike or cease work to be by secret ballot. It is made unlawful to intimidate a workman or his family in the enjoyment of these rights, to picket his domicile or to injure his person, property or that of his employer or family. Collectively, these statutes require that all employer-employee relations be conducted decently and in order .

At the outset it is shown that the trial court was confused about what this court had in mind in Boca Raton Club v. Hotel Employees Union, Local No. 255 (A. F. of L.), 83 So. 2d 11, when it stated that the union, prior to strike, should show that it represented "at least some of the employees." The reason for the expression "at least some of the employees" was that in that case it was not shown that the union represented any of the employees prior to the strike. In the case last cited the court contrasted Florida requirements and those of the Federal law wherein a majority of those belonging to the union is required to precipitate a strike. The quoted expression was a mere expletive of the situation before the court and has no relevance to this case.

It is not amiss to point out that there are circumstances in which the right to picket is an aspect of freedom of speech and may not be infringed. A. F. of L. v. Swing, 312 U. S. 321; Whitehead v. Miami Laundry Co., 160 Fla. 667, 36 So. 2d 382, and others. In Sax Enterprises v. Hotel Employees Union, Local No. 255, Fla. 80 So. 2d 602, and in other cases, we have called attention to the law placing limitations on picketing by requiring that it be peaceful, that the union must show that it represents the employees, that the employer must have been told of the object to be accomplished

by the picketing and afforded an opportunity to negotiate whatever differences there may be or impediments there are to accomplish the objective of the picketing.

At the trial and on appeal the law governing picketing and that governing the right to strike were confused. As to the latter, Section 447.09(3), Florida Statutes, as well as the Federal law, require that strike be approved by a majority vote of the employees to be governed thereby. No such requirement exists as to picketing. It cannot be initiated, however, for spite or for reasons other than to accomplish a lawful purpose and then the law, order and decency require that it be done in an atmosphere conducive to reaching a result that is fair to the employer, the employees and the public. If attempted in an atmosphere of violence, insinuation, bad faith, deception, farce or damned-if-I-don't-show-you spirit, it would not be recognized as a means of adjusting labor disputes. Satisfactory, fair or equitable judgments never emerge from such an atmosphere. Picketing conducted in such an environment, as we stated in Sax Enterprise v. Hotel Employees Union, Local No. 255, supra, is nothing more than a "species of coercion traveling under the guise of free speech for the purpose of enjoying constitutional immunity." It was widely at variance from the pattern confronting the court in A.F.L. v. Swing, supra.

The correspondence conducted between petitioner and respondents, as well as the evidence taken at the trial, exhibit bad faith, a lack of respect one for the other, a tense feeling between them and a disposition to haggle over the issues if there were any. We find little or no evidence to support the truth of the legend borne on the placard carried by the picketers, "This hotel unfair". Hotel Employees Union, Local 255, American Federation of Labor, 1575 Washington Avenue, Miami Beach." For all the record shows, the placard was a misrepresentation and was unfair to the petitioner. There is showing of intimidation by representatives of respondents to impede petitioner's employees in going to work. The picket line was thrown up before there was showing of any lawful grievance against petitioner and the picketers are not shown to have refrained from abuse to patrons entering the hotel or laborers working there. There is showing that about 200 of the

approximately 1,000 employees of the hotel signified the union as their bargaining agent prior to December 21, 1955, the day picketing started.

The correspondence between petitioner and respondents was commenced November 30, 1955, and was concluded January 6, 1956. In sum it charges: (1) That the picket line was thrown up without any pre-existing honest or forthright attempt to bring about negotiations between an authorized bargaining agent and the employer because of a bona fide labor dispute existing between the parties. (2) The picket line was thrown up before affording any fair opportunity to engage in negotiations. (3) Prior to picketing it was not shown by evidence of substantial character that the union was the authorized bargaining agent of the employees. (4) Under the law of this state the employer is required to negotiate with the true representative of the employees and the unsupported statement of a labor organizer is an insufficient showing to justify the employer in dealing with the alleged bargaining agent. It is not sufficient to establish even in court, after picketing is a reality, that the putative bargaining agent had in fact, prior to picketing, been so designated by an insignificant number or for that matter a majority of the employees. Boca Raton Club, Inc., v. Hotel Employees Union, Local No. 255, supra. (5) Prior to organizing a picket line, respondents failed to furnish evidence of substantial character that any employees had chosen it as their representative and offered the employer no opportunity to negotiate. (6) The employer has never been informed of the subject for negotiation, not only that, but respondents have attempted to coerce employer to participate in conduct prohibited by law. (7) Respondents do not represent the employees of the petitioner as their bargaining agent.

Respondents deny or evade these charges but the evidence supports most of them. The law of this state regulating picketing was designed to protect the laborers, the proprietors, and the public. All have a stake in the proper regulation of employer-employee relations. This court has in several cases discussed the prerequisites to good labor relations. Under the statute, Section 447.09(12)(13) and other provisions thereof, picketing contemplates a labor dis-

pute; it should not be conducted beyond the area of the industry or business where the labor dispute arises; it should not be done by force or violence; nor should it be done in such a manner as to prevent ingress and egress to and from any premises and it must be done in a peaceful manner. If done in aid of a strike, walkout, cessation of work or continuation thereof, it must be approved by a majority vote of the employees. Absent these requirements it is not necessary to determine at this time what percentage of the employees should participate in lawful picketing.

From a study of the record it is not conclusively shown that any bona fide labor dispute existed in petitioner's hotel. Only two of its employees participated in the picketing; in fact they did not know of the purpose of the picketing. It is not shown that there was any dissatisfaction with working or other conditions at the hotel. The record as a whole indicates that the picketing was precipitated by the union for the purpose of requiring both the petitioner and its employees to recognize it as the representative of said employees. It was accompanied by acts of violence or near violence condemned by the statute. The gravamen of the picketing is not shown to have originated within the confines of petitioner's hotel.

When a bona fide industrial grievance arises, legal and orderly picketing may be indulged in, but the law places limitations on it. It condemns violence, manhandling, the use of the club or the blackmariah. It provides an orderly process to conduct it and it contemplates that both parties will cooperate to bring about a solution advantageous to all concerned.

Nothing contained herein shall be construed as prohibiting any number of employees less than a majority from engaging as individuals (as distinguished from representatives of a labor union) in lawful picketing for the purpose of truthfully acquainting the public with their grievances, provided that prior thereto they shall have complied with the prerequisites to lawful picketing set forth in our opinion in Sax Enterprises vs. Hotel Employees Union Local No. 255, supra. In this opinion we are dealing exclusively with the right of a labor union which has been designated as the bargaining agent of less than a majority of employees of a given

employer, and we hold merely that the union as such, and as distinguished from the individual employees, may not, under the circumstances presented here, engage in picketing by use of the members of the union as pickets who are not employees of the subject employer.

We are convinced that so much that the law requires as a prerequisite to picketing was ignored in this case that respondents are entitled to no relief at the hands of this or any court. It follows that certiorari should be, and is hereby, granted and the judgment appealed from is quashed.

It is so ordered.

HOBSON, DREW, THORNAL and O'CONNELL, JJ., CONCUR

THOMAS and ROBERTS, JJ., not participating.

Appendix B

HOTEL	April 3	April 14	April 17	April 18	April 28-30	May 5	May 6	May 9	May 10	May 11	May 12	May 16	May 25	May 27	May 28	May 29	May 31	June 1	June 2
Saxony	Strike & Picketing (R. 6, 44, 233)	Complaint Filed (R. 1-10)				Order desy. Temp. Injunction (R. 10)		Answer (R. 25-29)					Secret Ballot Election (R. 44-52)	**Sup. Ct. Opinion & Judgment (R. 16-20)**	Prelim. Injunction (R. 31-32)				
Sans Souci			Strike & Picketing (R. 102, 238)	Complaint Filed (R. 79)	Hearing (R. 11-15)			Answer (R. 90)		Order desy. Temp. Injunction (R. 89)		Petition for Cert. (R. 263-269)	Secret Ballot Election (R. 246-253)					**Sup. Ct. Opinion & Judgment (R. 272-273)**	Prelim. Injunction (R. 98) Motion to Vacate (R. 100)
Sherry Frontenac			Strike & Picketing (R. 527-9, 202, 238)	Complaint Filed (R. 524)	Hearing (R. 11-15)			Answer (R. 535)		Order desy. Temp. Injunction (R. 534)		Petition for Cert. (n.p.)	Secret Ballot Election (R. 246-253)					**Sup. Ct. Opinion & Judgment (R. 550-553)**	Prelim. Inj. (R. 543) Motion to Vacate (R. 545)
Lombardy							Strike & Picketing (R. 581-617)		Complaint Filed (R. 577)		Answer (R. 585)		Secret Ballot Election (R. 624-628)				Hearing (R. 593-646)		Restraining Order (R. 646)
Miami Colonial													Secret Ballot Election (R. 732-748)		Strike (R. 681) Complaint (R. 659) Hearing (R. 667-781)	Restraining Order (R. 666)			
Nautilus																			
Delmonico													Secret Ballot Election (R. 837-843, 866, 868)	Picketing Begins (R. 826, 854, 866)					
President Madison																	Picketing (R. 854)		
Robert Richter													Secret Ballot Election (R. 992)						
Martinique													Secret Ballot Election (R. 1078)						
Versailles													Secret Ballot Election (R. 330)						
San Marino													Secret Ballot Election (R. 481-435)						

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HOTEL	June 1	June 2	June 3	June 4	June 5	June 6	June 7	June 8	June 9	June 10	June 11	June 15	June 16	June 17	June 24	June 28	July 6	July 9	July 11	July 27	Aug. 7
Saxony																Supp. Ans. (Commerce) (R. 33)					
Sans Souci	**Sup. Ct. Opinion & Judgment (R. 272-273)**	Prelim. Injunction (R. 98) Motion to Vacate (R. 100)		Hearing (R. 109-211)							Hearing (Cont.) (R. 211-262)			Order Vacating Temp. Inj. (R. 101)	Supersedeas (R. 274)	Supp. Ans. (Commerce) (R. 284)					
Sherry Frontenac	**Sup. Ct. Opinion & Judgment (R. 550-553)**	Prelim. Inj (R. 543) Motion to Vacate (R. 545)		Hearing R. 109-211)							Hearing (Cont.) (R. 211-262)		Order Vacating Inj. (R. 546)		Supersedeas (R. 554)	Supp. Ans. (Commerce) (R. 565)					
Lombardy		Restraining Order (R. 646)														Supp. Ans. (Commerce) (R. 648)					
Miami Colonial			Answer (R. 782)			Motion to Vacate (R. 789)				Order Denying Motion to Vacate (R. 791)											
Nautilus			Picketing Begins (R. 816)	Complaint Served (R. 816)	Picketing Ceases (R. 816)	Complaint Filed (R. 803)							Answer (R. 814)	Prelim. Injunction (R. 815)							
Delmonico									Complaint Filed (R. 825)			Answer (R. 831) Hearing (R. 852-873)	Temp. Restraining Order (R. 844)			Supp. Ans. (Commerce) (R. 845)					
President Madison									Complaint Filed (R. 881)			Answer (R. 889) Hearing (R. 852-873)	Temp. Restraining Order (R. 895)			Supp. Ans. (Commerce) (R. 896)					
Robert Richter							Picketing (R. 918-992)		Complaint Filed (R. 913)					Prelim. Injunction (R. 994)		Supp. Ans. (Commerce) (R. 996)					
Martinique								Picketing (R. 1048-1078)		Complaint Filed (R. 1045)			Answer (R. 1062)	Prelim. Injunction (R. 1080)		Supp. Ans. (Commerce) (R. 1082)					
Versailles											Picketing (R. 304, 379)	Complaint Filed (R. 297)				Supp. Ans. (Commerce) (R. 334)	Answer (R. 315)				
San Marino												Picketing (R. 406, 455, 481)		Complaint Filed (R. 403)		Answer (R. 412) Supp. Ans. (R. 431)	Hearing (R. 437-499) Oral ruling (R. 500-501)	Order Enjoining Picketing & Directing Election (R. 434)	Sup. Ct. Opinion on Supersedeas (R. 502)	Petition for Cert. (R. 505)	

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HOTEL	July 27	Aug. 7	Sept. 2	Sept. 16	Sept. 22	Sept. 26	Oct. 19	Nov. 20	Dec. 5	Dec. 14	Dec. 19	Dec. 20	Dec. 23	Jan. 5	Jan. 9	Jan. 13	Feb. 23	Feb. 27	March 15	HOTEL
Saxony								Stip. re. Final Hearing (R. 35) Final Decree (R. 51)											**Sup. Ct. Opinion & Judgment (R. 57)**	Saxony
Sans Souci							**Sup. Ct. Opinion & Judgment (R. 277, 283)**	Stip re. Final Hearing (R. 287) Final Decree (R. 291)											**Sup. Ct. Opinion & Judgment (R. 295-6)**	Sans Souci
Sherry Frontenac							**Sup. Ct. Opinion & Judgment (R. 557, 563)**	Stip re. Final Hearing (R. 567) Final Decree (R. 570)											**Sup. Ct. Opinion & Judgment (R. 547-5)**	Sherry Frontenac
Lombardy											Stip. re Final Hearing (R. 650) Final Decree (R. 654)								**Sup. Ct. Opinion & Judgment (R. 657-8)**	Lombardy
Miami Colonial									Stip re. Final Hearing (R. 794) Final Decree (R. 797)										**Sup. Ct. Opinion & Judgment (R. 801-2)**	Miami Colonial
Nautilus								Stip re. Final Hearing (R. 819) Final Decree (R. 821)											**Sup. Ct. Opinion & Judgment (R. 823-5)**	Nautilus
Delmonico								Stip re. Final Hearing (R. 847) Final Decree (R. 873)											**Sup. Ct. Opinion & Judgment (R. 878-879)**	Delmonico
President Madison								Stip re. Final Hearing (R. 898) Final Decree (R. 903)											**Sup. Ct. Opinion & Judgment (R. 908-9)**	President Madison
Robert Richter														Stip re Final Hearing (R. 1000) Final Decree (R. 1001)					**Sup. Ct. Opinion & Judgment (R. 1006-1007)**	Robert Richter
Martinique												Stip. re. Final Hearing (R. 1084) Final Degree (R. 1085)							**Sup. Ct. Opinion & Judgment (R. 1090-1091)**	Martinique
Versailles			Amended Complaint (R. 337)	Hearing (n.p.)	Order Denying Temp. Inj. (R. 379)	Petition for Cert. (R. 380)				Sup. Ct. Opinion & Judgment (R. 388, 389)	Prelim. Injunction (R. 391)			Stip. re. Final Hearing (R. 393)	Final Decree (R. 394)				**Sup. Ct. Opinion & Judgment (R. 399)**	Versailles
San Marino															Sup. Ct. Opinion & Judgment (R. 507-512)		Stip. re. Final Hearing (R. 514)	Final Decree (R. 515)	**Sup. Ct. Opinion & Judgment (R. 520-521)**	San Marino

Sup. Ct. Opinion on Petition for Cert. (R. 505)
Supersedeas (R. 502)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

Nos. 5 and 6

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al.,
Petitioners,

v.

SAX ENTERPRISES, INC., et al.;
HARRY LEVY, et al., d/b/a
SHERRY FRONTENAC HOTEL, et al.,
Respondents.

On Writs of Certiorari to the Supreme Court of Florida

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SHERRY FRONTENAC HOTEL, et al.,
Respondents.

On Writs of Certiorari to the Supreme Court of Florida

BRIEF FOR RESPONDENTS

OPINIONS BELOW

The opinions of the Supreme Court of Florida which bear upon the questions presented and which on one facet or another, are involved in this petition, are reported, as follows:

1. *Sax Enterprises, Inc.* v. *Hotel Employees Union,* 80 So. 2d 602.
2. *Boca Raton Club* v. *Hotel Employees Union,* 80 So. 2d 680.
3. *Thomas Jefferson, Inc.* v. *Hotel Employees Union,* 81 So. 2d 731.
4. *Boca Raton Club* v. *Hotel Employees Union,* 83 So. 2d 11.

5. *R. S. Levy* v. *Hotel Employees Union,* 83 So. 2d 852.

6. *Thomas Jefferson, Inc.* v. *Hotel Employees Union,* 84 So. 2d 583.

7. *Fontainebleau Hotel Corp.* v. *Hotel Employees Union,* 92 So. 2d 415.

8. *Per curiam* opinions of the cases involved are reported in 93 So. 2d 583-600.

FLORIDA STATUTES INVOLVED

447.01 Regulating labor unions; state policy:

(1) Because of the activities of labor unions affecting the economic conditions of the country and the state, entering as they do into practically every business and industrial enterprise, it is the sense of the legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or nonunionist, must be protected. The right to work is the right to live.

(2) It is here now declared to be the policy of the state, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers and other representatives, in the manner, and to the extent hereafter set forth.

447.03 Employees' right of self-organization:

Employees shall have the right to self-organization to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

447.09 Right of franchise preserved; penalties—It shall be unlawful for any person:

(1) To interfere with or prevent the right of franchise of any member of a labor organization. The right of franchise shall include the right of an

employee to make complaint, file charges, give information or testimony concerning the violations of this chapter, or the petitioning to his union regarding any grievance he may have concerning his membership or employment, or the making known facts concerning such grievances or violations of law to any public officials and his right of free petition, lawful assemblage and free speech.

(2) To prohibit or prevent any election of the officers of any labor organization.

(3) To participate in any strike, walkout, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in subsection (3) of this section without a secret ballot.

(5) To charge, receive, or retain any dues, assessments or other charges in excess of, or not authorized by, the constitution or bylaws of any labor organization.

(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.

(7) To solicit membership for or to act as a representative of an existing labor organization without authority of such labor organization to do so.

(8) To make any false statement in an application for a license.

(9) For any person to seize or occupy property unlawfully during the existence of a labor dispute.

(10) To cause any cessation of work or interference with the progress of work by reason of any jurisdictional dispute, grievance or disagreement between labor organizations.

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those

guaranteed in § 447.03, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.

(12) To picket beyond the area of the industry within which a labor dispute arises.

(13) To engage in picketing by force and violence, or to picket in such a manner as to prevent ingress and egress to and from any premises, or to picket other than in a reasonable and peaceable manner.

447.11 Actions and suits; labor organizations as parties:

Any labor organization may maintain any action or suit in its commonly used name and shall be subject to any suit or action in its commonly used name in the same manner and to the same extent as any corporation authorized to do business in this state. All process, pleadings and other papers in such action may be served on the president or other officer, business agent, manager or person in charge of the business of such labor organization. Judgment in such action may be enforced against the common property only, of such labor organization.

447.13 Right to strike preserved:

Except as specifically provided in this chapter, nothing therein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this chapter be so construed as to invade unlawfully the right to freedom of speech.

447.14 Penalties:

Any person or labor organization who shall violate any of the provisions of this chapter shall, upon conviction thereof, be adjudged guilty of a misdemeanor and be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

QUESTIONS PRESENTED

In our view, the record in these cases does not support the factual recitations contained in the questions presented in the Petitioner's Brief. Therefore, we take the liberty of re-stating the questions, predicated upon our understanding of the record before the Supreme Court of Florida and that part of that record now before the Supreme Court of the United States.

1. Whether a State Court may enjoin picketing where

(a) the objective sought to be achieved by the pickets and the labor union they represent, is unlawful and contrary to the public policy of the State;

(b) the picket signs are untruthful;

(c) the picketing is accompanied by acts of violence or near violence condemned by the State labor statute and is set in a background of coercion and tension.

2. When, to intensify the economic pressure generated by the unlawful picket line, the union engages in false advertising, may a State Court lawfully enjoin all of the concerted unlawful and fraudulent acts which form a part of the union's scheme to impose economic sanctions upon the employer.

3. Whether or not the National Labor Relations Act protected the union from court action in its unlawful, fraudulent and violent picketing.

STATEMENT OF THE CASE

BACKGROUND

In late January, 1955, the Hotel & Restaurant Employees and Bartenders International Union "invited"

one of its organizers, Mr. David Herman, at that time President of a local of said International Union in New York City, to spearhead a drive to organize the employees of the luxury hotels on Miami Beach. He accepted the invitation and therupon the drive commenced. (R. 1104)

Salaries paid by innkeepers to most of their employees have been and always will be comparatively nominal. The reason for this is due to the time-honored custom which impels hotel patrons to tip such employees. This is the main source of their income. Obviously, a union can do little to aid employees in obtaining bigger and better tips. Moreover, Miami Beach is the Gold Coast of Florida, where luxury hotels cater to and attract fabulous personalities and extravagant visitors. Dissatisfaction among the employees was nonexistent. The union did not choose a fertile field and its efforts to persuade the employees to become members of the union met with dismal failure.

A new tack was taken by the union in late March, 1955. It determined to move against the employers through economic sanctions, utilizing pressure on the employer to procure recognition of the union as the bargaining agent for employees, the union did not represent. To this end, a letter dated March 30, 1955, was directed by the organizer (Herman) to the Miami Beach Hotel Association, suggesting that the hotel association and the union organizer meet to discuss and work out labor problems. (R. 45) The Miami Beach Hotel Association is not authorized by its members to bargain for them and it is in no wise concerned with internal problems of management of its members. A deadline of ten days was given to the Hotel Association to meet with the union organizer. (R. 45) No response from the Association was forthcoming, and without further ado, the International Union, through Local No. 255, commenced its campaign of economic sanctions.

The union moved in with its picket lines against the hotels in the following order:

DATE	NAME	LOCATED
April 13, 1955	Saxony Hotel	3201 Collins Ave.
April 13, 1955	Monte Carlo Hotel	6551 Collins Ave.
April 15, 1955	Casablanca Hotel	6345 Collins Ave.
April 15, 1955	Roney Plaza Hotel	2301 Collins Ave.
April 16, 1955	Sherry Frontenac Hotel	6565 Collins Ave.
April 17, 1955	Sans Souci Hotel	3101 Collins Ave.
April 19, 1955	Sorrento Hotel	4391 Collins Ave.
April 21, 1955	Algiers Hotel	2555 Collins Ave.
April 22, 1955	Sea Isle Hotel	3001 Collins Ave.
May 2, 1955	Empress Hotel	4333 Collins Ave.
May 4, 1955	DiLido Hotel	155 Lincoln Road
May 6, 1955	Lombardy Hotel	6305 Collins Ave.
May 23, 1955	Versailles Hotel	3425 Collins Ave.
May 27, 1955	Delmonico Hotel	6398 Collins Ave.
May 31, 1955	President Madison Hotel	3801 Collins Ave.
June 3, 1955	Nautilus Hotel	1825 Collins Ave.
June 7, 1955	Robert Richter Hotel	3301 Collins Ave.
June 8, 1955	Martinique Hotel	6423 Collins Ave.
June 15, 1955	San-Marino Hotel	4299 Collins Ave.
Dec. 21, 1955	Fontainebleau Hotel	4441 Collins Ave.

Each of these hotels is bounded on the east by the Atlantic Ocean and on the west by Collins Avenue. This is a strip of land which varies from 200 feet in depth to approximately 600 feet in depth. The land between 23rd Street and 46th Street on this strip is exclusively occupied by luxury hotels; from 47th Street northward to 59th Street, this strip is occupied by private residences and estates; from 60th Street north to 71st Street, this strip is wholly utilized by luxury hotels. All the hotels cater to tourists and are appointed to afford their patrons the full enjoyment of the climate and amusements of this area. They specialize in the highest quality of service. All hotel business is sensitive to a disruption of service. Luxury hotels are particularly sensitive to any disturbances in the elaborate services provided for their patrons, aimed as they are to the purpose of enabling the visitors to enjoy a pleasant and relaxing vacation.

STEPS IN THE LITIGATION

1. As the union would throw up picket lines, the hotels would respond by filing complaints seeking injunctions in the Circuit Court of the Eleventh Judicial Circuit of Dade County, Florida, a court of general chancery jurisdiction. On April 28, 1955, picket lines had closed off the Saxony Hotel, the Sherry Frontenac Hotel, the Roney Plaza Hotel, the Sorrento Hotel, the Sea Isle Hotel, the Algiers Hotel, the Sans Souci Hotel, the Casablanca Hotel, and the Monte Carlo Hotel, and on that date these hotels had responded by applications for injunctions.

Each of the complaints filed by the hotels in brief alleged that the union had placed a picket line around plaintiff's hotel; that the plaintiff had not refused to negotiate with the union; it had not refused to recognize the union; the union had never advised the plaintiff it was the bargaining agent of plaintiff's employees; no proof was submitted that the union represented the employees; the picket lines were placed by the union without notice to the plaintiff; in truth, the union did

not represent the employees; the picketing was carried on in a violent manner; the union was using force, intimidation and coercion to disrupt the plaintiff's business; through such pressure, it sought to force the plaintiff to deal with the union; the conduct of the union was causing irreparable injury.

Under the filing system used by the Circuit Court of Dade County, Florida, these several cases were assigned to different judges of the court. Counsel for the plaintiffs in these several cases procured the consent of the several judges to sit en banc to hear at one time all these applications for temporary injunction in all nine cases. On April 28, 1955, hearings on the applications commenced before Judges Carroll, Crawford, Cannon and Floyd. (R. 11-13) The Sans Souci Hotel case actually had been assigned to Judge Gordon, but in his absence, Judge Floyd presided. Plaintiffs' testimony was taken before the court on April 28, 29, and 30, 1955. (R. 1096-1296) During the night session on April 29, 1955, Judge Cannon, to whom the Casablanca Hotel and the Sea Isle Hotel cases had been assigned, dropped out of the hearing.

The evidence adduced at these hearings established that no economic issues between the labor union and the hotel were involved. No such issues had prompted the picket line. (R. 1120) That revelation was made to the newspapers by Mr. Herman, the labor organizer. (R. 1120).

The picket lines were thrown up by the union solely in an effort to procure recognition of the union as the collective bargaining agent for the hotel employees of each of the hotels picketed. (R. 1120) Each of the hotel owners and operators testified at the hearings . . . George E. Fox for the Saxony Hotel (R. 1123); Ralph McIntyre for the Lombardy Hotel; Louis Kenin for the Algiers Hotel (R. 1259); Ralph E. Snider for the Sea Isle Hotel (R. 1263); Richard Dolan for the Roney Plaza Hotel (R. 1279); Morris Lansburgh for the Sans Souci and Sherry Frontenac Hotels (R. 1287); Murray Friedman and Bernard Resnick for the Sorrento Hotel (R.

1293-94); Benjamin G. Kline for the Monte Carlo Hotel (R. 1292) . . . that the union had not established and did not attempt to establish to any of the hotel owners that it in fact had been designated collective bargaining agent for their employees. This testimony further established that in no instance did the union afford to the hotel owners and operators a reasonable opporunity to recognize the union or to negotiate with it.

Each of the picket lines was thrown up without any effort having been made on the part of the union to establish to the hotel owners and operators that it had been designated the collective bargaining agent. Ralph E. Snider's testimony (Sea Isle Hotel) is particularly interesting because in truth, Snider wished to negotiate with the union, and met for the purpose of receiving proofs. It is unfortunate that the transcript of the proceedings referred to in the record at page 1266 has not been brought to this Court.

In the Sherry Frontenac Hotel case, there is no denial of the evidence given by Morris Lansburgh, one of the owners of the Sherry Frontenac and Sans Souci Hotels. He testified that on Saturday, April 16, 1955, at 3:30 p.m., a labor organizer (David Herman) called him on the telephone and told him he wanted to negotiate as the representative of the employees of these hotels. (R. 1289) Mr. Herman gave Mr. Lansburgh exactly fifteen minutes to call back with an answer, notwithstanding the fact that Mr. Lansburgh had informed Mr. Herman he wanted first to discuss the matter with his partner (who happened to be in Chicago at the time) and would call him in Chicago. Mr. Herman again demanded that Mr. Lansburgh call back "before 3:45 p.m.". When Mr. Lansburgh failed to do so, he received word at 3:50 p.m. that a picket line was already marching around the Sherry Frontenac Hotel. And, on Sunday morning at 6:30, a picket line was marching around the Sans Souci Hotel.

The evidence adduced at these hearings also amply established the violent conduct of the union.

One witness testified that his car was hit and that he was struck with an automobile tire lug. (R. 1150). Prior to the incident, he had been threatened at the hotel where he worked. (R. 1154).

Another witness, visiting Miami Beach, testified that she was in the car when several men smashed the windows of the car. (R. 1164).

Another witness testified that she had been worried by having pickets snap her picture a number of times. (R. 1175-1176).

Another employee testified that he was living at the hotel because of fear of trouble in the event that he left for home each night; that he had been struck, cursed at, pointed out on the picket line, had his picture taken by the pickets prior to the time he stayed in the hotel. (R. 1177-1179).

A threat was made against one employee to another employee. (R. 1194).

Another witness testified to threats, abusive language, curses and a fight started by pickets (R. 1197-1198).

A waitress testified that as she left the hotel by car, a picket blocked the passage of the automobile, she was threatened, her car was spat on, (R. 1202), and her picture was also taken at the picket line. (R. 1205).

Another witness told of leaving his employment after a fight and after threats had been made against his family and his wife. (R. 1206).

A waitress testified that her car was blocked, she was threatened, and thereafter an attempt was made to force her car off the road. (R. 1212).

A housewife whose husband was employed at the hotel told of being accosted, being subjected to abusive language against her husband, and then hearing her

husband cursed at, and being present when her husband was beaten by several men. (R. 1216). Her husband testified to the same effect. (R. 1218-1219).

An officer observed a picket kick a man walking into one of the hotels. (R. 1227).

An employee testified that his life, his home, his parents and his car were threatened if he returned to work. The windows of his car were thereafter broken, causing him to put his car in storage. (R. 1234).

An employee waiting for a bus got a lift with two men who told him that they were going his way. He was told not to go back to work again, and noticing the car was traveling in the wrong direction, he became frightened and jumped out of the car when it stopped for a light. (R. 1233-1241).

The auditor for one of the hotels found the gasoline tank ripped out of his car and four tires slashed. (R. 1242).

A lobby porter was threatened by three men. (R. 1247).

A waitress was threatened and subjected to annoying, anonymous 'phone calls. (R. 1250).

A police sergeant testified to the existence of twenty-five complaints filed in the City of Miami Beach concerning violence that had arisen during this situation. (R. 1143).

After the plaintiffs rested their cases (R. 1296) at the conclusion of the hearings upon applications for temporary injunction, the trial judges, Carroll, Crawford and Floyd, rendered their order (R. 13-15) denying the temporary injunction.

In this order, the court recognized that the plaintiffs contended that the picketing was "for illegal purposes"

but it declined to pass on this question until final hearing. (R. 14)

Attention is again directed to the fact that at the evening session on April 29, 1955, Judge Cannon withdrew from the hearing (R. 1187-90) His cases involved the Casablanca and Sea Isle Hotels. Subsequently, on the continuation of the hearings in those two cases, Judge Cannon granted injunctions because of the violent manner in which the picketing was conducted by the union.

To the orders denying the temporary injunction, the hotel owners took an appeal by certiorari on May 16, 1955, to the Supreme Court of Florida (R. 263-269). The record was consolidated and the appeal for all intents and purposes was a consolidated appeal. The Supreme Court of Florida reversed the lower court's refusal to grant temporary injunction. (R. 272) All cases were reversed on the authority of the opinion which was entitled in the Saxony Hotel case (R. 16-21) The Sax opinion of reversal was filed May 27, 1955. The lower court (Judge Carroll) in the Sax case conformed to the Supreme Court's decision on May 28, 1955, and rendered a preliminary injunction. (R. 31) On June 2, 1955, temporary injunctions in compliance with the Supreme Court's order, were rendered in the other cases (Judges Crawford, Floyd and Gordon). (R. 543)

On June 4, 1955, Judges Crawford, Floyd and Gordon (Gordon had returned to the City, but was absent on April 28, at the commencement of the hearings) commenced hearings upon a motion to vacate temporary injunctions, which they had two days before entered in compliance with the judgment and decision of the Supreme Court of Florida.

Prior to the commencement of these hearings, and on May 9, 1955, the union filed its answers in each of the cases. In not one of the answers had the union contended that the State Court was without jurisdiction to determine the issues involved and in not one of the answers did the union contend that the exclusive juris-

diction of the controversy vested in the National Labor Relations Board. (R. 23; 535) In each of the answers, the union filed a cross-suit (R. 27; 539) in which it invoked the jurisdiction of the State Court to grant it affirmative relief.

The testimony and evidence adduced at the hearings upon the application to dissolve injunctions is shown in the record at pp. 109-262. This was a continuation of the trial which was commenced on April 28, 1955, except that the Casablanca and Sea Isle Hotels (Judge Cannon) and the Saxony Hotel case (Carroll J.) were no longer involved.

The evidence of the union disclosed that it did not represent a majority of the employees at any of the hotels at the time it had established the picket lines. The union produced its records in the form of "designation cards". These were put in evidence by the union and are the documents which are relied upon by the union to prove its designation as the bargaining agent of the employees.

On June 16, 1955, preliminary injunctions were dissolved by Judges Floyd, Gordon and Crawford. (R. 546-549) The picket lines again went up at the six hotels involved.

The hotels immediately appealed by certiorari the order dissolving temporary injunctions. On June 17, 1955, the hotels applied to the trial court for a supersedeas order by which the force and effect of the order dissolving the injunctions might be suspended pending the appeal.[1] The trial court denied the supersedeas on

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(1) Florida Appellate Rule 5.1—When it shall be made to appear to the lower court that an appeal to review an interlocutory order or decree in equity has been or is about to be taken to the court, the lower court may, in its discretion, grant a supersedeas or stay upon appellant's giving a good and sufficient bond conditional that such appeal shall be taken within ten days, and to pay all costs, damages and expenses occasioned by reason of the stay of proceedings, together with such other and further conditions as may be fixed by the lower court in the event the order or judgment of which a review is sought, is not quashed, modified or reversed.

June 17, and 18, 1955. (R. 262; 549) The hotels sought a review of the order denying supersedeas under Florida Appellate Rule 5.10.[2]

On June 24, 1955, the Supreme Court of Florida granted the hotels a supersedeas pending disposition of the second appeal by certiorari. (R. 274; 554) (Upon the granting of supersedeas by the Supreme Court of Florida on June 24, 1955, the picket lines came down again. The force and effect of the supersedeas was to reinstate the preliminary injunctions.)

Thereafter, on June 28, 1955, the union for the first time attempted to assert a lack of jurisdiction in the State Court to hear and determine any of these cases on the ground that exclusive jurisdiction was vested in the National Labor Relations Board. This attempt was made by filing without leave of Court a supplemental answer in the Saxony case. (R. 33) The Saxony Hotel case had come to issue on May 9, 1955. (R. 23) On that date the union filed its answer in the nature of a cross-bill invoking the jurisdiction of the State Court to grant it affirmative relief.

On October 19, 1955, the Supreme Court of Florida granted a writ of certiorari in the Sherry Frontenac, Sans Souci, and other hotel cases above referred to, and thereby reversed the orders of Judges Crawford, Floyd and Gordon, which had dissolved preliminary injunctions. (R. 277-283)

The Supreme Court of Florida in its opinion of reversal made the following findings of fact from the record:

> "This record paints a picture not of employees exercising their right to 'self-organization' or their

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(2) Florida Appellate Rule 5.10—If the lower court refuses to grant a supersedeas or stay, or if any bond required by said court is deemed to be arbitrary or unreasonable or such as is for any other reason not proper, the order of refusal, or the order fixing the terms and conditions of the bond, may be reviewed and overruled, modified or discharged by the Court on motion, provided reasonable notice of the hearing on said motion is given to the adverse party.

right to 'bargain collectively through representatives of their own choosing' but, on the contrary, limns one of two labor organizers coming to Miami Beach early this year, organizing a local labor union, and attempting for a period of two to three months, as they had every right to do, to persuade petitioners' employees that they were not being treated fairly in the matter of hours, wages and conditions of work, and that they should therefore designate the union as their bargaining agent or join the union or do both. After failing to so persuade no more than an insignificant number of such employees that they were being treated unfairly, as is established by the designation cards introduced in evidence, they immediately resorted to the use of the coercive effect of picketing without either of them first establishing by any evidence substantial in character that the respondent union in truth and in fact had been designated as the bargaining agent of any employees of the petitioner. Thereafter these men, who cannot be said to have given the employers a fair opportunity to negotiate since they gave said employers no substantial evidence of the union's authority to represent any of the employees, arranged for and had the picket lines thrown up for the obvious purpose of forcing the employers to cause their employees to designate the union as their bargaining agent and perhaps to join the union. That picketing carried on under such circumstances is unlawful cannot be gainsaid. It falls within the 'unlawful purpose' doctrine of Miami Typographical Union v. Omerod, 61 So. 2d 753." (R. 282-283)

We find no place in the record before the Supreme Court of the United States, the evidence (the designation cards) upon which the Supreme Court of Florida concluded that the union did not represent the employees. Nevertheless, there is in the record a brief filed by the appellants reciting exactly what was shown by the designation cards.

"These nine hotels are all appellees herein, namely, the Saxony, controlled by Sax Enterprises, Inc.; the Roney Plaza, controlled by a corporation; Boca Raton Club; the Monte Carlo Hotel, controlled by a corporation of the same name; the Sans Souci

Hotel, controlled by Leevlans corporation; the Sherry Frontenac Hotel, controlled by Harry Levy et al; the Sorrento Hotel, controlled by a corporation of the same name; the Algiers Hotel, controlled by 2500 Collins Avenue corporation; the Casablanca (sic) Hotel, controlled by the Casablanca Operating Company; the Sea Isle Hotel, controlled by a corporation of the same name. At a preliminary hearing on the first (fol. 536) 7 of the aforementioned nine hotels, the Chancellors denied the temporary relief sought, but the Chancellor who heard the evidence and testimony on behalf of the latter two hotels, issued temporary injunctions and based said decrees on the fact that the picket lines were set in a background of violence." (R. 65)

"Those cards indicated that in the Algiers Hotel, one employee had designated the union as his bargaining agent, prior to the picket line; in the Sans Souci Hotel case two employees had designated the union prior to the picket line; in the Monte Carlo Hotel case, none of the employees had designated the union prior to the picket line; in the Sorrento Hotel case, three employees had designated the union prior to the picket line; in the Sherry Frontenac Hotel case, one employee had designated the union prior to the picket line; in the Roney (fol. 539) Plaza Hotel case, no employees had designated the union prior to the picket line." (R. 67)

This disposes of the steps of the litigation in the Saxony, Sherry Frontenac, and Sans Souci Hotel cases up to the final wholesale adjudication in all of the hotel cases.

In the *Versailles Hotel* case, the record clearly indicates that the hotel, prior to the commencement of any picketing or the institution of any litigation, designated an agent to confer with the union representatives, and that a conference was held in the agent's office on May 20, 1955 between the hotel owners and representatives of the union. (R. 354-364)

A casual perusal of the statements made by the union representatives at this conference reveals that

the union would not indicate whom they represented and further whether in fact they represented a majority of the hotel's employees. It is revealed that the union wanted to be recognized as bargaining agent of "ANY" employee it represented. At this meeting, the hotel attempted to establish satisfactory mechanics which would make it possible for the union to indicate and designate the employees it represented. As this conference bears out, and as subsequent actions of the union indicate, the union refused to pursue further any negotiations or adopt any mechanics which might be satisfactory to both parties whereby the employees the union claimed to represent, might be identified.

Upon the conclusion of this conference, the parties were to meet again, but notwithstanding this agreement, the union elected to abandon further discussions and addressed its communication to the Versailles Hotel on June 6, 1955. (R. 310)

The union then commenced picketing on June 11, 1955, and the Versailles Hotel filed its complaint for injunction (R. 309) on June 15, 1955.

The union filed its supplemental answer on JUNE 28, 1955, in which it urged that the Circuit Court of Dade County, Florida, was without jurisdiction to try the cause because the National Labor Relations Board had exclusive jurisdiction. (R. 334)

Thereafter, on July 6, 1955, the union filed its answer in which it sought affirmative relief from the State Court. (R. 516-522). On September 22, 1955, Judge Floyd denied application for temporary injunction. (R. 379)

An appeal by certiorari was filed to said order in the Supreme Court of Florida on September 26, 1955, by the hotel. Thereafter, on December 14, 1955, the Supreme Court of Florida reversed the trial court on the authority of the Boca Raton opinion. (R. 389)

This brings the Versailles Hotel case down to the date that final decrees were entered, en masse, in all the hotel cases.

In the Robert Richter Hotel case, the issues presented are moot. The former owners, Morris Lansburgh, et al., no longer have any interest in this hotel, direct or indirect, nor do they operate the same. All factual situations which are set forth as applicable to the Versailles Hotel are equally applicable to the Robert Richter Hotel case with the exception of dates. The conference referred to which was held for the Versailles Hotel included the Robert Richter Hotel (R. 356)

The union established a picket line in front of the San Marino Hotel on June 15, 1955. Complaint was filed against the union in this hotel case on June 17, 1955. (R. 403) The same pattern of prior negotiation between the hotel and the union had transpired. The union had communicated with the hotel to the effect that the union represented a majority of the employees. The hotel ascertained that it only represented 2 of the employees. (R. 406)

On July 6, 1955, the union filed its answer to the complaint and in its answer it sought affirmative relief. (R. 412-419) Also, on July 6, 1955, the union filed a separate paper it termed a supplemental answer (R. 431) in which it set forth that the trial court was without jurisdiction to try the case because exclusive jurisdiction was vested in the National Labor Relations Board.

Testimony was taken on the complaint and the answer on July 9, 1955. (R. 437-499)

At the conclusion of the hearing, the Court granted temporary restraining order (R. 500) and granted the union's prayer in its answer, for appointment of a commissioner to conduct a secret ballot of the employees. In this order, the court found that only 3 employees had designated the union as their bargaining agent at the time the picket line was thrown up. (R. 500) A formal decree was thereafter rendered by the court on July 11,

1955. (R. 434) The court found no strike was in process at the San Marino Hotel (R. 435) and enjoined the union from falsely advertising. *The Court found that the allegations with respect to interstate commerce had not been supported by the evidence.*

Thereafter, the San Marino Hotel prosecuted an appeal from the court's decree. On January 13, 1956, the Supreme Court reversed that portion of the decree of the lower court which appointed a commissioner to conduct an election at the hotel. This brings the San Marino down to final hearing.

The picketing commenced at the Martinique Hotel on June 8, 1955. The hotel filed its complaint for injunction, the allegations of which followed the usual pattern set in the other injunction suits, on June 10, 1955. (R. 1045-1055) On June 16, 1955, the union filed its answer (R. 1062-1068) in which it sought affirmative relief.

Application for injunction was heard on affidavit and preliminary injunction was granted on June 17, 1955. (R. 1080)

On June 28, 1955, the union filed a supplemental answer in which it averred that the court was without jurisdiction because exclusive jurisdiction of the action was vested in the National Labor Relations Board. Thereafter, the case was submitted under a general stipulation to the court for rendition of final decree.

The Miami Colonial Hotel case followed the usual pattern. Complaint was filed on May 28, 1955, and consolidated hearing on the Miami Colonial, McAllister and Biscayne Terrace Hotels commenced on the night of May 28, 1955, before Judge Giblin. (R. 668-779) The oral opinion of the court was rendered enjoining the union. (R. 780)

Thereafter, in all twenty-two of the hotel cases, the plaintiffs and the union stipulated that final decrees might be entered upon the record that had theretofore been made in each case on the preliminary hearings

"with the single addition however, that at said Final Hearing, the defendants would produce Clarence Smith as a witness, who would testify according to affidavit attached hereto, . . ."

It was further stipulated that the testimony would be objected to on the grounds that it was was immaterial and irrelevant, and that "Final Decree be entered by the Chancellor upon the record as now made . . .". (R. 567-568)

Thereafter, without further hearings, the trial courts were presented with final decrees making the preliminary injunctions permanent. All of these were appealed to the Supreme Court of Florida.

One brief was filed by the union on "appeal of the twenty-two hotel cases from the Circuit Court of the Eleventh Judicial Circuit". (R. 58)

Each of the cases were affirmed per curiam in the same form on the authority of the Fontainebleau Hotel case. (R. 1006) The Fontainebleau Hotel opinion is reported in 92 So. 2d 415.

The Nautilus, Lombardy, Delmonico and President Madison Hotels, we believe, are actually not now involved. We are informed that some of these hotels have already signed contracts with the union and the owners of the others have long since lost their leases and no longer operate the hotels.

ARGUMENT

We shall consider, in this Argument, the first and second questions:

1. Whether a State Court may enjoin picketing where:

(a) The objective sought to be achieved by the pickets and the Labor Union they represent, is unlawful and contrary to the public policy of the State;

(b) The picket signs are untruthful;

(c) The picketing is accompanied by acts of violence or near-violence condemned by the State Labor Statute and is set in a background of coercion and tension.

2. When, to intensify the economic pressure generated by the unlawful picket line, the Union engages in false advertising, may a State Court lawfully enjoin all of the concerted unlawful and fraudulent acts which form a part of the Union's scheme to impose economic sanctions upon the employer.

The State of Florida has adopted what is commonly known as "The Right to Work Law". The Constitution of the State of Florida, in the Declaration of Rights, Sec. 12, guarantees that:

> "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization."

In the adoption of the Right to Work Law, the legislature of the State of Florida declares:

> "The right to work is the right to live." (Sec. 447.05 Fla. General Laws)

Employees are guaranteed the right to self-organization and to bargain collectively "through representation of their own choosing". (Fla. Statutes 447.03) The act condemns any conduct which has as its purpose, the intimidation of any employee in the enjoyment of his legal right to bargain collectively through an agent "of his own choosing".

This Statute, like Right to Work Statutes of other states, has been held to be consistent with the Federal Constiution, and particularly the 14th Amendment thereof. *Local Union No. 10 vs. Graham 345 U. S. 192.*

Picketing of an employer's place of business by a Union for the purpose of denying to the employees the

rights guaranteed to them under lawful State statutes is unlawful conduct and picketing under such circumstances constitutes an effort to achieve an unlawful purpose.

Attention is directed to Sec. 447.14 of the Florida Statutes (Note (1)) which renders it a misdemeanor to deny to an employee his right, free of intimidation, to bargain through a representative of his own choosing.

The Florida Courts found, in each of the twenty-two hotel cases, that at the time the Union threw up its picket line and utilized other methods of economic sanction, it did not represent the employees of the hotels. It was the avowed purpose of these picket lines and the false advertising that accompanied it, to force the employers to recognize the Union as the bargaining agent of the hotels' employees. Upon the recognition of the Union, the next step was to be the negotiation of a contract with the hotels on behalf of the employees.

It would be of no value to the Supreme Court of the United States for us to review and comment on the decisions in the *Thornhill case 310 U. S. 88,* in the *Swing case 312 U. S. 321* and the *Gazzam case 339 U. S. 532.* The Supreme Court of the United States has recently reconsidered each and every one of these opinions and decisions. In the case of the *International Brotherhood of Teamsters Union vs. Vogt, Inc., 354 U. S. 284* it has answered adversely the contention of the Petitioners that the State Court is without power under a State Right to Work Law to enjoin picketing and false advertising connected therewith which has for its purpose the violation of the rights guaranteed to labor by the State's Right to Work Law. By the *Vogt case* the Court sustains the right and power of the Courts of Florida to enjoin picketing under the circumstances presented by this record.

The facts in *Pappas v. Stacey* referred to *(151 Maine 56, 116 Atl. 2d 497)* are exact in every detail with the facts reflected by the records of the cases now under consideration. In disposing of these same questions

again posed here by the Petitioners, the Supreme Court of the United States in the *Vogt case* stated:

> "This series of cases, then, established a broad field in which a State, in enforcing some public policy, whether of its criminal or its civil law, and whether announced by its legislature or its courts, could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy.
>
> "In the light of this background, the Maine Supreme Judicial Court in 955 decided, on an agreed statement of facts, the case of Pappas v. Stacey, 151 Me. 36, 42, 116 A. 2d 497, 500. From the statement, it appeared that three union employees went on strike and picketed a restaurant peacefully 'for the sole purpose of seeking to organize other employees of the Plaintiff, ultimately to have the Plaintiff enter into collective bargaining and negotiations with the Union * * *.' Maine had a statute providing that workers should have full liberty of self-organization, free from restraint by employers or other persons. (R. S. 1954, c. 30, §15) The Maine Supreme Judicial Court drew the inference from the agreed statement of facts that 'there is a steady and exacting pressure upon the employer to interfere with the free choice of the employees in the matter of organization. To say that the picketing is not designed to bring about such action is to forget an obvious purpose of the picketing—to cause economic loss to the business during noncompliance by the employees with the request of the union.' It therefore enjoined the picketing, and an appeal was taken to this Court.
>
> "The whole series of cases discussed above allowing, as they did, wide discretion to a State in the formulation of domestic policy, and not involving a curtailment of free speech in its obvious and accepted scope, led this Court, without the need of further argument, to grant appellee's motion to dismiss the appeal in that it no longer presented a substantial federal question. 350 U. S. 870, 76 S. Ct. 117, 100 L. Ed. 770."

The Petitioner expresses the hope that the Supreme Court of the United States will recede from the position

taken in the *Vogt case*. However, nothing advanced in their Brief suggests any justification for such a reversal of position.

3. Whether or not the National Labor Relations Act protected the union from court action in its unlawful, fraudulent and violent picketing.

We respectfully suggest that this question is not properly raised by the record. The petitioner-union sought the State Court's jurisdiction on its cross-bills or answers seeking affirmative relief. It did not, in a single answer filed by it, initially raise the question of the want of jurisdiction in the State Court or suggest that the exclusive jurisdiction of the several causes was possessed by the National Labor Relations Board.

See:

Saxony	Answer filed May 9, 1955	(R. 23)
Sans Souci	Answer filed May 9, 1955	(R. 90)
Sherry Frontenac	Answer filed May 9, 1955	(R. 535)
Lombardy	Answer filed May 12, 1955	(R. 585)
Miami Colonial	Answer filed June 3, 1955	(R. 782)
Delmonico	Answer filed June 15, 1955	(R. 831)
President Madison	Answer filed June 15, 1955	(R. 889)
Nautilus	Answer filed June 16, 1955	(R. 814)
Robert Richter	Answer filed June 16, 1955	(R. 956)
Martinique	Answer filed June 16, 1955	(R. 1062)
Versailles	Answer filed July 6, 1955	(R. 315) *
San Marino	Answer filed July 6, 1955	(R. 412)

On June 19, 1955, the union first suggested in the State Court proceedings that the National Labor Relations Board has exclusive jurisdiction. This was accom-

* The so-called supplemental answer was filed before the general answer which asked for affirmative relief.

plished in the Saxony case by the union filing what it termed a supplemental answer (R. 33). This answer was filed out of turn.[3]

In the six cases initially filed before Judges Crawford, Floyd and Gordon, this so-called supplemental answer never appeared in the record until after the final decree had been rendered and the case was on appeal to the Supreme Court of Florida. Under the stipulation of counsel of February 24, 1956, it was agreed that these supplemental answers had been misfiled and under said stipulation they were made a part of the record. (See, form of the misfiled answers' stipulation, R. 284; 564.)

At the time this stipulation and these misfiled answers were placed in the record, the trial court had lost jurisdiction of the causes. In only two cases was this supplemental answer timely filed so as to become a part of the record in the causes. In the first, the San Marino case, the union filed its answer on the merits on July 6, 1955 (R. 512) and on the same day, filed the so-called supplemental answer dealing with the lack of jurisdiction in the State Court because of the National Labor Relations Act. On July 9, 1955, this cause proceeded to trial. No evidence was adduced to sustain the allegations of the supplemental answer. On the issues made by this answer, the court found:

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(3) Florida Rules of Civil Procedure. Rule 1.15 Amended and Supplemental Pleadings.

(a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

"The allegations of the Supplemental Answer alleging interstate commerce and averring that this Court does not have jurisdiction were not supported by evidence. This Court has jurisdiction of the parties and the subject matter." (R. 434)

It is interesting to note that the trial court in its decree granted to the union the relief sought by it on its cross-bill. The San Marino case is the only case in which it appears that this supplemental answer was brought to the attention of the trial court.

In the Versailles Hotel case, the union timely filed its supplemental answer. This case initially fell in Judge Cannon's division. It was filed on June 15, 1955 (R. 298). On June 28, 1955, the union filed its supplemental answer (R. 334) objecting to the State Court's jurisdiction. Thereafter, the cause found its way into Judge Floyd's division and the union filed an answer on the merits on July 6, 1955, in which answer affirmative relief was sought. (R. 315) Judge Floyd entered an order denying the temporary injunction on September 22, 1955. (R. 379) However, no evidence to sustain the supplemental answer was offered in any form by the union. (See, Stipulation in Re Final Hearing, R. 393.)

This union apparently had always assumed a position contrary to that indicated in the supplemental answers. (See, *The Hotel Association of St. Louis case, 92 Decisions and Orders of NLRB 1389.*) In that case, the union appeared as an intervenor.

Only after the tide of fortune commenced to turn against the union in these cases, did it determine to change positions. On June 29, 1955, it filed its appeal before the National Labor Relations Board. *Hotel Employees Local No. 255, et al., v. Boyd Leedom, etc., et al., 147 F. Supp. 306.*

Moreover, the National Labor Relations Board had adjudicated in 1949 that the cessation of the operations of a tourist hotel business would affect commerce so inconsequentially as to render the business outside the operation of the National Labor Relations Act. *In the Matter of White Sulphur Springs Co., 9 R C 392, decided*

September 19, 1949, 85 Decisions and Orders NLRB 1487.

The case of *Guss v. Utah Labor Relations Board, 353 U. S. 1,* has no application to the facts of the cases at bar, for in that case, it had been agreed that the appellant was "engaged in commerce within the meaning of Section 2(6), (7) of the National Labor Relations Act." So in that case, the jurisdiction of the National Labor Relations Board was conceded and the problem presented was whether under such circumstances a State agency could assume jurisdiction in a labor controversy which admittedly was within the protective provisions of the National Labor Relations Act. The court held that the act preempted the field.

The case of *San Diego Building Trades Council v. Garmon, 353 U. S. 26,* is also inapplicable to the cases at bar, for there again, the employers in their pleadings alleged that they "were in interstate commerce and that the contract sought by the unions would violate the Act." (National Labor Relations Act.)

There is a marked difference between the facts in the case of *Amalgamated Meat Cutters & Butcher Workmen of North America v. Fairlawn Meats, Inc., 353 U. S. 20* and the cases at bar. In that case a clear-cut issue was raised and was urged at every stage in the proceedings in the State court, that the Court was without jurisdiction to hear the cause. In that opinion, Mr. Chief Justice Warren carefully pointed out: "the petitioners objected throughout that the jurisdiction of the National Labor Relations Board was exclusive." (p. 605)

This is not so in the cases at bar. The union did not object throughout that the jurisdiction of the National Labor Relations Board was exclusive. In every case, it initially sought relief in the State Court proceedings. As long as it was victorious in the State Court it did not see fit to protest the Court's jurisdiction. If what it filed in the trial court amounts to a protest of jurisdiction at all, it was in the form of an imperceptible murmur not audible to the chancellors or the Supreme Court of Florida.

The petitioner seeks to strengthen this weakness in its cause by making the brief it filed in the Supreme Court of Florida a part of the record. Little or no comfort is afforded petitioner from the examination of their discussion of this point before the Supreme Court of Florida. (R. 62-63)

The Circuit Court of Dade County, Florida, is a court of general jurisdiction. In the exercise of its traditional and ancient chancery jurisdiction, it has the power to enjoin defendants from unlawfully interrupting and interfering with a plaintiff's business when such conduct causes irreparable injury. In order for such a court of general jurisdiction to lose its jurisdictional power to act because of the existence of facts not shown by the pleading which initially activated its jurisdiction, it is necessary and essential that a party to the litigation, by a recognized form of pleading and proof, establish in the cause the facts which oust the court's jurisdiction.

It seems obvious to us from the decisions of the Supreme Court of the United States, in the *Vogt, Gazzam* and *Pappas cases, supra,* that the State Court's jurisdiction remains unimpeached and undefeated if no proper pleading and proof testing the jurisdictional question is presented to the trial court.

In labor cases the Supreme Court of the United States has from time to time established that the State Courts have power to enjoin violence and where a pattern of violence is established, all acts which form a part of that pattern, may be enjoined. *Milk Wagon Drivers Union of Chicago v. Meadowmoor Dairies, 312 U. S. 287.*

This reserved State power is exercised by a State agency in the public right even though such State agency is activated by the complaint of a person suffering an injury to his private rights. The right of the State is embedded in its police power permitting it to maintain peace and order within its borders.

Obviously, if two hotel buildings side by side are owned by the same person and the union throws a separate picket line around each hotel building, the fact that extreme violence is manifested around one building, but not around the other would not incapacitate the State Court to enjoin picketing around both, where the coercive pattern encompasses the entire locality. The fact of dspersed ownership of the hotels does not deny the State the power to control through the State courts, the entire pattern of violence imposed by the union. Some acts of intimidation appeared in every picket line. The violence was extreme at the Sea Isle Hotel, located at 3001 Collins Avenue. Therefore, upon a consideration of that record alone, the State Court enjoined the picketing and the acts of intimidation. At the Empress Hotel, 4333 Collins Avenue, the violence was exceedingly extreme. A description thereof can be found in the brief filed before the Supreme Court of Florida. (R. 1035-39)

On the record made in that case, the trial court enjoined the union from picketing and from engaging in other acts of violence and coercion.

At the Casablanca Hotel, 6345 Collins Avenue, the record in that case established repeated and extreme acts of violence. An injunction was granted by the trial court against the union by reason thereof.

On the final appeal before the Supreme Court of Florida, all twenty-two hotel records were presented at one time and were considered by the Court. The written arguments were contained in one brief. The cases were submitted as presenting a question which was common to all. Upon examination of all these records, the Court affirmed each of these cases on the authority of the Fontainebleau Hotel case. For the first time, the Supreme Court of Florida had presented to it the overall true picture of the mass assault by this union upon the peace, security and welfare of a limited locality.

In the Fontainebleau Hotel case which is the basis for the affirmance of the injunctive orders in all cases, the Supreme Court of Florida said:

> "The record as a whole indicates that the picketing was precipitated by the union for the purpose of requiring both the petitioner and its employees to recognize it as the representative of said employees. *It was accompanied by acts of violence or near violence condemned by the statute.*" (Petitioner's Brief, App. A, p. 52) (Emphasis supplied.)

This powerful and violent movement in a small and limited area against a single industry, posed a serious threat to the welfare and peace and security of the area. This activated the State's reserved power to defend itself.

Attention is directed to the fact that the union did not file a petition for certiorari in those cases where the violence was so predominant. Therefore, the full record in these cases which was before the Supreme Court of Florida is not before the Supreme Court of the United States.

CONCLUSION

We respectively submit that the Supreme Court of Florida did not err in sustaining the power of the State trial court to enjoin the activities of the union under the circumstances disclosed by the record.

Respectfully submitted,

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Nos. 5 & 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

HOTEL EMPLOYEES UNION, LOCAL NO. 255, ET AL.,
Petitioners

v.

SAX ENTERPRISES, INC., ET AL.; HARRY LEVY, ET AL.,
DOING BUSINESS AS SHERRY FRONTENAC HOTEL, ET AL.,
Respondents.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

PETITIONERS' REPLY BRIEF

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Respondents.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

PETITIONERS' REPLY BRIEF

Respondents' brief does not, as we read it, seriously dispute much of the argument presented in our opening brief. It does make, however, certain assertions which we believe require comment.

1. The question of violence or "near violence."

At pages 11-12 of their brief, respondents cite a series of items extracted from the supplemental record in an effort to show that the picketing in these cases was accompanied by violence. In their argument they urge, at pages 29-31, that the final injunctions in all 22 cases decided simultaneously by the Supreme Court of Florida were affirmed by that court because the picketing was accompanied by acts of violence or "near violence."

Without inquiring what "near violence" may be (cf.

Teamsters Union v. *Newell,* 356 U. S. 341) it is a sufficient answer to this material that in none of the cases now before this Court did either a trial court or the Supreme Court of Florida find that there was such violence (or near violence) as would justify a restraint against peaceful picketing. Indeed, in only three of the cases now before this Court did the respondents even offer testimony in support of a claim that picketing could be enjoined on any such basis: the Saxony, the Sans Souci and the Sherry Frontenac,

In the Saxony case the trial court found that there was insufficient evidence to justify a restraint against picketing on the basis of the claim of violence. (R. 14) On certiorari, the Supreme Court of Florida upheld that finding, stating that there was an "insufficient showing to reverse the Chancellor on the question of whether or not picketing the Saxony Hotel was accompanied by violence." (R. 17) Four of the instances of violence cited by the respondents on pages 11-12 involve testimony offered in support of the proposition that the picketing at the Saxony was accompanied by violence.

The same result was reached at both judicial levels in the Sans Souci and the Sherry Frontenac cases (R. 14, 272, 551) as well as in four other cases not here for review, the Roney-Plaza, the Sorrento, the Algiers, and the Monte Carlo. Five of the instances of alleged violence listed on pages 11 and 12 of respondents' brief involved picketing at those hotels.

In the other nine cases here for review, there was not even an attempt to prove violence or "near violence." In some of them, the plaintiffs alleged violence or what might be called "near violence." (Lombardy, R. 583; Miami Colonial, R. 664; Nautilus, R. 809; Delmonico, R. 829; President Madison. R. 887) In others, they alleged that the defendants had engaged in violence at "other hotels." (Versailles, R. 306; San Marino, R. 407; Robert Richter, R. 920; Martinique, R. 1050) In none of these cases, however, did they offer any evidence in support of those allegations, and in none of them did the trial courts issue injunctions based upon

the claim of violence, or near violence, at the hotel concerned or elsewhere.

There were three cases of the 22 decided simultaneously by the Supreme Court of Florida in which there had been a finding that picketing should be enjoined because of violence. Those three involved the Casablanca, the Sea Isle, and the Empress. None of them is here for review.[1]

It is now contended by appellants, however, that the hotels were so close to each other and the cases so inter-related that the Supreme Court of Florida, in finally affirming the injunctions in each of the 22 cases on the authority of the *Fontainebleau* case, based its decision, in each case, on the existence of "violence or near violence" in these three cases.

This is nonsense. It is impossible, first of all, to read the *Fontainebleau* opinion as being based on any conclusion that there was a "background of violence" in that case. A reading of the whole opinion in that case, which is reprinted in Appendix A of our opening brief, clearly negatives the inference which the respondents seek to draw from the sentences which they quote. Secondly, on the prior appeals to the Supreme Court of Florida in these cases respondents had urged, on the basis of the very evidence in the supplemental record now relied upon, that there was a "background of fear, intimidation, coercion, and force." (R. 269) But the Supreme Court of Florida had rejected that contention and had made it clear that the injunctions which it directed be issued were not based upon any such theory. Finally, respondents did not argue, in the briefs covering the 22 cases in the Florida Supreme Court, that the injunctions in all of the

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[1] Agreements have been reached between the union and the hotel management at the Sea Isle and Empress. See Point 5, below. Most of the evidence involving the Casablanca is contained in the supplemental record. Although we believed, and still believe, that the evidence was not sufficient to warrant an injunction against all picketing at that hotel, we deliberately chose not to seek review of the injunction in that case in order to avoid any possible contention that we were asking the Court to reverse a finding of fact made by the Florida courts.

cases could be sustained because of the claimed violence in 3 of them. To the contrary, they argued that the earlier decisions constituted "the law of the case" (R. 64-68, 1019-1021) and that picketing was properly enjoined for failure to meet the requirements for peaceful picketing set forth in the Saxony and Boca Raton opinions. Only the injunction in the Empress Hotel case was sought to be sustained on the violence theory.[2]

2. The suggestion that the claim of preemption was not properly raised in the trial court.

Respondents argue, at pages 25-26, that the Union did not properly raise the claim in the trial courts that state jurisdiction was preempted by the National Labor Relations Act. This contention can only be made as to four of the cases here for review.

In three cases—the Sans Souci, the Sherry Frontenac and the Lombardy—it was discovered when the records were being made up for appeal to the Supreme Court of Florida that the supplemental answers raising this jurisdictional issue were missing, although the parties had stipulated as to the method by which the trial courts could determine that issue. Counsel for the respondents then entered into a stipulation with counsel for petitioners that such supplemental answers had in fact been filed in the trial courts in these cases on June 28, 1955, and that such supplemental answers should be considered as having been filed June 28, 1958, "as a predicate for the affidavit [as to interstate commerce] attached to the Stipulation r. Final Hearing," already contained in the record. (R. 284, 564, 648).

Counsel for respondents also contend that in the Saxony,

[2] The brief filed in the Supreme Court of Florida by the counsel who represented 17 of the 22 hotels, including the Casablanca and the Sea Isle, did not even rely upon violence as a ground for sustaining the injunctions in those two cases. (R. 64-78) The brief filed by the counsel who represented 3 of the remaining hotels, including the Empress, did rely upon violence as a ground for sustaining the injunction in that case. (R. 1031-1040)

as well as in the three cases in which the stipulations above referred to were executed, the supplemental answers were "out of turn" because filed more than 20 days after the original answer had been served, without leave of court or written consent of the adverse party having been obtained, as required by Florida Rules of Civil Procedure, Rule 1.15.[3]

The same contention is apparently also made as to all of the remaining cases, except the San Marino and the Versailles, but the record clearly shows that the supplemental answers in those remaining cases, as well as in the San Marino and the Versailles, were filed within the period permitted for amending pleadings by the Florida rule. (R. 831, 845; 889, 896; 956, 996; 1062, 1082)

These procedural contentions do not even deserve reply. Counsel for the respondents have not previously suggested, in any court, that the issues tendered by the supplemental answers in these four cases were not squarely joined in the trial courts or in the Supreme Court of Florida. In each case, including the three in which the supplemental answer originally filed was lost, counsel for the respondents—*before final hearing*—entered into a stipulation in the trial court that at the final hearing, the union would produce a witness who would testify that the hotel concerned was engaged in a business affecting commerce, that the sales of the hotel in interstate commerce exceeded the amount necessary to establish jurisdiction of the National Labor Relations Board, that the hotel purchased numerous items from outside the State of Florida, and that it made sales directly outside the State of Florida.[4] In each of the four, the respondents stipulated that the only objection they would make to such evidence was that it was immaterial and irrelevant. The stipulation further provided that the testimony, and the objection, would be submitted to the Chancellors for ruling

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[3] This rule is identical with Rule 15 of the Federal Rules of Civil Procedure.

[4] R. 37, 288, 568, 651.

thereon, and that the Chancellors could enter final decrees "upon the record as now made in the light of this Stipulation." [5] In each of the four, the trial court in its final decree, sustained the objection.[6]

Surely, respondents could not have been heard to contend in the Supreme Court of Florida that there was a procedural defect, unmentioned to this point, which prevented the question from being reviewed there. Any defect was surely cured by the stipulations as to final hearing. And, even if it was not so cured, it is elementary law in Florida, as elsewhere, that procedural errors not raised below which do not prejudice the rights of any party cannot be raised on appeal. *City of Winterhaven* v. *State ex rel. Groves Corp.,* 114 Fla. 93, 153 So. 92; *In re Johnson,* 24 So. 2d 711; *Caldwell* v. *Peoples Bank,* 73 Fla. 1165, 75 So. 848, 852. And, of course, counsel for respondents did not rely in the Supreme Court of Florida on any such procedural error to avoid the issue raised by the supplemental answers. To the contrary, they briefed the issue on the merits in that court. (R. 77-78, 1040-1043) Any possible right which they might have had to rely on procedural deficiencies in the filing of papers in the trial courts was therefore clearly waived.

3. The suggestion that the Supreme Court of Florida concluded that the Union did not represent the employees.

In their brief, respondents state flatly that the "Supreme Court of Florida concluded that the union did not represent the employees" at the hotels here involved (Respondents Brief, pp. 16-17, 23) and repeat the section of their brief in the Supreme Court of Florida in which they made such a contention to that court.

So far as we have been able to determine, the question of how many employees actually wished the union to represent them was not regarded as material by the Supreme Court of

[5] R. 36, 287, 567, 650.
[6] R. 53, 291, 570, 654.

Florida. This was so because, under Section 447.03 of the Florida statute, all employees are entitled to bargain collectively, and there is no provision that the representative chosen by the majority represents all of the employees. A minority of the employees in a given unit is, therefore, entitled to bargain through a union, and picketing in support of a union demand for such bargaining is permissible. *Johnson* v. *White Swan Laundry,* 41 Co. 2d 874 (1949).

In the second *Boca Raton* opinion, the Supreme Court made it clear that this remained the rule. The critical requirement for picketing, as expressed by the Florida Supreme Court in that opinion, was that the "union must establish by some evidence of substantial character that *at least some of the employees* have chosen it as their representative and 'afford to the employees a fair opportunity to engage in negotiations.'" (R. 281, 561, emphasis added.) The picketing was held unlawful in that case because the union had not "first . . . submitted to the petitioner competent substantial evidence of their authority as alleged bargaining agents." (R. 283, 563) In the *Fontainebleau* case the court specifically said that "no such requirement [for a majority vote] exists as to picketing." (Petitioners' Brief, Appendix A, page 50.)

While the respondents' assertion that only one, two, or three of the employees had "designated the union" in some of the cases prior to the picket line is therefore immaterial, we think that the process by which the respondents reach this conclusion may be of interest to the Court.

At the hearing on the motion to vacate the preliminary injunction in the Sherry Frontenac case, the union produced three witnesses who testified that they were members of Local 255, that they desired Local 255 to represent them, that they had walked off their jobs on April 16, 1955, as part of the strike called by the union and that they did so voluntarily. It was then stipulated that 47 other witnesses who were present in the courtroom and whom the union

proposed to put on would testify similarly. (R. 141-159) In the Sans Souci case, the total number of employees so shown to have supported the union was 57. (R. 173-181)

How then can respondents claim that only one employee at the Sherry Frontenac, and only two at the Sans Souci, had "designated the union prior to the picket line"? The answer is simple. At the hearing, the respondents contended that if an employee who testified had signed a card designating the union as his bargaining agent, the card was the "best evidence." (R. 115-116, 129) The card which the employee had signed was therefore introduced. Many of the cards so introduced did not specify Local 255 but another local of the Hotel Employees' Union or the Miami Hotel Trades Council. Also, many of the cards were only signed by union supporters on the day they went on strike or thereafter. In the Supreme Court of Florida it was the view of counsel for the respondents that only those who had signed cards for Local 255 prior to going on strike should be counted as having designated the union. Counting only such of those cards as were "properly identified as evidence by those who executed the same," (R. 67) they concluded that only one, two or three employees at each hotel had designated the union prior to the time that picketing began.

We recite these facts not because they are material to the disposition which this Court should make of these cases but only to dispel any suggestion that the number of employees listed by counsel for the respondents has any relation to the number of employees who supported the union's action.

4. The suggestion that the union picketed for the purpose of obtaining an agreement covering all of the employees even though it did not represent a majority.

In their argument respondents attempt to bring this case within the rule of the *Vogt* case (354 U. S. 284) and *Pappas* v. *Stacey* (151 Me. 36, 116 Atl. 2d 497), in both of which it was found that the purpose of the picketing was to induce the employer to interfere with the free exercise of his em-

ployee's right to join or not join the union. (Brief, pp. 23-24.) To the same effect is the argument based upon the Florida "Right to Work" law. (Brief, p. 22.)

This argument wholly ignores the fact that there is not one word of testimony in the record in these cases which could even be argued to support the proposition that the union sought, by its picketing, to coerce the employers into coercing their employees to join the union. Such a purpose was expressly disavowed in several of the cases (R. 311, 946, 1070).

The union's position in all of the cases is fairly reflected in the transcript of the conference which took place between the representatives of the Versailles and the representatives of the union. (R. 354-368) At that conference the employer's representative proposed that the employees be individually interrogated as to whether they desired to be represented by the union. The union would even have agreed to that proposition if the employer would agree to bargain with the union for the particular employees who chose the union in such interrogation. Under the laws of Florida, as set forth above, the union had the right to ask for such representation. But the employer would not agree. The union then proposed that a secret-ballot election be conducted and agreed that it would not request bargaining for those it represented if a majority voted "no." The employer refused. When the union then began to picket, after submitting a certificate from a certified public accountant that the books and records of the union showed that 59 out of the 75 employees in the service trades (R. 313, 323) were members of the union, the Supreme Court of Florida held that such picketing was picketing for an unlawful purpose. (R. 389)

5. The question of mootness.

In their brief, at page 21, counsel for the respondents say that four hotels are no longer involved in the present controversy, those four being the Nautilus, the Lombardy, the Del-

monico and the President Madison. Some of these hotels, they state, have already signed contracts with the union; the owners of others have long since lost their leases and no longer operate the hotels.

Even though respondents have not filed a formal suggestion of mootness with respect to these four cases—and indeed elsewhere (p. 31) appear to complain that we did not file petitions for certiorari in other cases in which collective bargaining agreements have been signed—we regard the matters so raised quite seriously in view of this Court's settled rule that it will not decide "moot questions or abstract propositions," *California* v. *San Pablo & T. R. Co.*, 149 U. S. 308, 314.

We wish to make it perfectly clear that none of the questions before the Court are moot or hypothetical. The Nautilus, Lombardy, Delmonico and President Madison present no issues not presented in the other cases. Indeed, we proposed to counsel for respondents that, in order to simplify consideration and argument in this Court, these four cases and others be omitted from the petition for certiorari, with an agreement that they could be disposed of by the Florida courts on the basis of any judgment rendered in the remaining cases.

Any mootness question, therefore, is a technical one and does not affect the issues to be decided, although the fairly considerable costs in the Florida courts and in this Court may be affected by its resolution. As a technical matter, it is not at all clear to us that a permanent injunction against all picketing by a union at the premises of a hotel becomes moot because the union signs a collective bargaining agreement with the employer. To avoid any possible question in that regard, however, counsel for petitioners in this Court did endeavor to eliminate from consideration here any case in which such an agreement was signed by the union. We were originally retained to file petitions for certiorari in all 22 cases. We requested the union to inform us as to whether

any agreements had been signed with any of the 22 hotels, and we were then informed that agreements had been signed in 9 of the cases, as follows:

Monte Carlo Hotel—October 1955

DiLido Hotel—February 1956

Empress Hotel—November 1956

Sorrento Hotel—January 1957

Algiers Hotel—January 1957

Sea Isle Hotel—January 1957

Roney Plaza Hotel—April 1957

McAllister Hotel—April 1957

Biscayne Terrace—June 1957

In addition we ascertained that an agreement had been reached with the Fontainebleau Hotel in January 1957.

In accordance with this information we did not, in the request for an extension of time in which to file petitions for certiorari which we filed in June 1957, include any of the above named cases. The petitions for certiorari covering only 12 cases were subsequently filed on August 12, 1957 and granted on December 16, 1957. After failing to secure agreement from counsel for respondents on a reduction in the number of cases in which the record had to be printed, we filed our designations in all 12 cases and respondents cross-designated in each of them.

Our first knowledge that additional agreements had been signed by the union was obtained from the respondents' brief. Subsequent to receipt of that brief we have ascertained that in two cases such agreements have been signed: the Lombardy on June 18, 1957 and the Nautilus on September 7, 1958. We believe it unfortunate that, at the time the record was designated by us and cross-designated by respondents, we were not aware that an agreement had been signed with the Lombardy and respondents did not

suggest that fact. The agreement with the Nautilus was, of course, signed only recently.

If the Court should be of the opinion that the fact that an agreement has been signed with those two hotels makes the injunctions against picketing at those hotels moot, we have no objection to whatever disposition of those cases the Court would regard as appropriate.

We assume that the two other hotels named by respondents, the Delmonico and the President Madison, are the ones in which the "owners" have lost their leases. In the absence of any further knowledge, however, we are uncertain as to what this signifies and as to whether a change in the lessee of a hotel necessarily voids an injunction which has been entered prohibiting the union from picketing in the vicinity of that hotel. If the union is now free to conduct peaceful picketing at the premises of the Delmonico and the President Madison, we assume that there is no present controversy before this Court in those two cases. There remains, of course, in all four cases, the question of costs in this Court as well as in the Florida courts. See *Heitmuller* v. *Stokes,* 256 U. S. 359, 362-63; *Dyer* v. *City Council of Beloit,* 333 U. S. 825.

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IN THE

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Nos. 5 and 6 — October Term, 1958

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al.,
Petitioners,

5 v.

SAX ENTERPRISES, INC.; LEEVLANS CORFORATION; R. S. LEVY, DANIEL LIFTER and J. S. LANSBURG, as Trustee; et al.

HOTEL EMPLOYEES UNION, LOCAL No. 255, et al.,
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6 v.

HARRY LEVY et al., doing business as SHERRY FRONTENAC HOTEL, STUYVESANT CORPORATION, ABE ALLENBERG, et al.

PETITION FOR REHEARING

THOMAS H. ANDERSON
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HARRY LEVY et al., doing business as SHERRY FRONTENAC HOTEL, STUYVESANT CORPORATION, ABE ALLENBERG, et al.

PETITION FOR REHEARING

The respondents in cases No. 5 and 6 above-entitled, jointly and severally respectfully petition the Supreme Court of the United States for a rehearing and modification of the judgment, order or decree rendered by the Court in the above-entitled causes on January 12, 1959.

GROUNDS

The Supreme Court of the United States in its judgment and decision as aforesaid in which it held and decreed that the stipulations referred to in said judgment and opinion, precluded the respondents from contesting in the lower court the question of whether or not the hotels owned by the respondents were engaged severally in interstate commerce, misconceived the intent and purpose of said stipulations and has attributed to said stipulations a meaning not consonant with the aims thereof. Thereby the Supreme Court of the United

States has inadvertently denied to the respondents due process of law, for that respondents severally have been denied the right to the trial of said issue of whether or not the respondents' hotels were severally engaged in interstate commerce.

In the stipulations in the Sax case (R. 35), the Sans Souci case (R. 287), the Lombardy case (R. 650), the Miami Colonial case (R. 784) and the Nautilus case (R. 847), the words therein used, "that final decree be entered by the Chancellor upon the record as *now* made in the light of this stipulation" were intended to refer to a record in which the affidavit of Smith constituted a *proffer,* and nothing more.

A consideration of the circumstances leading up to the execution of the stipulations will establish, we think, that it was not the intention of either side to deprive the respondents of a right to a trial on said issue, in the event of a reversal of the judgments upon the sole ground that the lower court erroneously rejected evidence which was relevant and material to the cause. * (Assignments of Error, ¶3, R. 54-55, 292-293, 396-397, 516-517, 572-573, 655-656, 798-799, 822-823, 875-876, 905-906, 1002-1003, 1086-1087)

The Union, as early as June 13, 1955, had commenced negotiations to obtain stipulations from the attorney for the hotels in all causes not then pending on appeal to the Supreme Court of Florida, in which it was to be agreed that the causes would be submitted to the trial court for final decrees on the record then made. This was prior to the Union's change of position on the question of the jurisdiction of the National Labor Relations Board over the causes pending.

---

*Assignments of Error No. 3. "The Court erred (in and by virtue of its final decree) in refusing evidence showing that the cause of action was within the exclusive jurisdiction of the National Labor Relations Board pursuant to Labor Management Act of 1947, and in asserting jurisdiction over the cause of action, all in violation of Article 1, Section 8, and Article 6 of the Constitution of the United States."

A photostatic copy of the first stipulation prepared, signed and submitted by the Union to accomplish the termination of the cases is hereto attached, marked Exhibit "A", and made a part hereof. On the face of this stipulation there appears the pencilled notations of the attorney for the hotels (Marion E. Sibley). Also attached to Exhibit "A" is the Union's suggested final decree adjudicating the causes favorable to the hotels. As a part of Exhibit "A" is a photostatic copy of the reworded stipulation suggested by the attorney for the hotels. The changes are minor—they merely broaden the scope of the record to include "proofs" as well as testimony. Exhibit "A" deals with the early negotiations on the Lombardy Hotel case.

The same procedure was followed in other cases including the Miami Colonial case. A photostatic copy of the signed stipulation of the Union as well as the reworded stipulation of the hotels and the Union's suggested final decree, are hereto attached, marked Exhibit "B", and made a part hereof.

It is to be noted that the negotiations for stipulations commenced on or prior to June 13, 1955. The first supplemental answer was filed injecting the question of the National Labor Relations Board's jurisdiction into the cause in the Saxony Hotel case on *June 28, 1955.* (R. 33). In the Lombardy Hotel Case (Stuyvesant Corp.) no such supplemental answer was filed except by the grace of the stipulation regarding the misplaced answer (R. 648). In the Miami Colonial case (Abe Allenberg), the *Union did not file a supplemental answer raising the question and therefore the question of interstate commerce and the exclusive jurisdiction of the National Labor Relations Board has not been raised in that case and the question is not before the Supreme Court of the United States (R. 659-802).*

Thus, before the arrangements and stipulations for final hearing were consummated, the Union decided to

pose in the record the question of whether or not the hotels were engaged in interstate commerce. The attorneys for the parties continued to seek to solve the problem of stipulations. On July 8, 1955, the Union sought a stipulation in the Saxony Hotel case, the Casablanca Hotel case and the Sea Isle Hotel case (the latter two involved violence and were not brought to the Supreme Court of the United States). A photostatic copy of the original letter from the Union's attorney to the hotels' attorney is attached hereto, marked Exhibit "C" and made a part hereof, together with the stipulation enclosed in the letter. It is to be noted that this enclosed stipulation refers parenthetically to a "supplemental answer". It is obvious that it was prepared after the receipt by the Union attorney of the Hotel attorney's reworded stipulation, because the language has been changed so as to include the word "proofs", which was suggested in the respondents' reworded stipulation.

The letter of July 8th shows that the affidavit of Smith did not accompany the stipulation. In fact, the affidavit referred to in that suggested stipulation was one to be given and executed by Herman and which was in fact executed by Herman on July 13, 1955 (R. 39, 45) and was ultimately attached to the final draft of the stipulation. This Herman affidavit contains nothing in reference to the hotels engaging in interstate commerce.

It is also to be noted that the "Smith affidavit" was not sworn to until the 15th day of November, 1955 (R. 38). Between those dates the stipulation was re-drafted by the Union's attorney in an effort to pose the issue in the record on the question of the hotels engaging in interstate commerce.

Finally, on October 26, 1955, the Union's counsel had come up with language in the stipulation which they thought would pose the issue and at the same time, forestall the necessity, on the part of both counsel, of having to submit evidence pro and con. In other words, it was the desire of the parties to pose the issue but not try it unless it was determined that the issue was ma-

terial and relevant. A photostatic copy of the original letter of Union's counsel, together with enclosed form of stipulation as finally suggested and the form of the Smith affidavit is hereto attached, marked Exhibit "D" and made a part hereof.

It was understood that the objection to the affidavit upon the sole ground that "it was immaterial and irrelevant" would be sustained in a formal decree agreed to by counsel and the question would not be submitted for argument or determination of the court. This procedure was followed.

The record that counsel had in mind as the record *upon which a final decree would be rendered was the record that would exist after the objection to the affidavit had been sustained; and it remained in the case only as a proffer.* There was not the slightest intention on the part of local counsel for the Union or the hotels to preclude the respondents from trying the issue of fact in the event the decree was reversed because the evidence should have been admitted as material and relevant. The "now" put in the last paragraph of the stipulation referred to a record without the affidavit of Smith being a part thereof, but merely a proffer.

We especially direct the attention of the Court to the language of the stipulation: ". . . and in the event the objection is sustained, the affidavit of Clarence Smith shall remain as a part of the record as a proffer and all objections as to form of such proffer *be* and they *are* hereby waived."

If counsel had meant otherwise than here contended, they would have stipulated that the *facts* set forth in the Smith affidavit were true. This would have eliminated the issue now actually pending between the parties. In truth, the opinion of the Supreme Court of the United States assumes that we are dealing with only resort hotels. This is predicated on the affidavit of

Smith, whereas, at least one, Miami Colonial Hotel, is not located on Miami Beach, is located in downtown Miami, and its mode of doing business is far removed from that indicated in the Smith affidavit.

As we have heretofore suggested, no pleading in the Miami Colonial case was ever filed suggesting that the National Labor Relations Board had exclusive jurisdiction of that case.

To further sustain our position in this matter, we respectfully call the Court's attention to the record in the San Marino Hotel case. No affidavit of Smith was tendered in that case. The stipulation (R. 514) provided that the testimony and evidence "heretofore introduced in this cause" shall be presented to the court for the rendition of a final decree. No proofs were introduced in evidence to establish that the San Marino was engaged in interstate commerce. The court so found after a trial of the case (R. 434) as follows:

> "The allegations of the Supplemental Answer alleging interstate commerce and averring that this Court does not have jurisdiction were not supported by evidence. This Court has jurisdiction of the parties and the subject matter."

It is true that attached as a part of the pleading there was an affidavit signed by Herman (R. 419). This, however had not been *"introduced"* in evidence. So, in order to pose the question of whether or not the hotel was engaged in interstate commerce, counsel for the Union prepared the final decree for the court and provided as is shown by a photostatic copy of the original of said decree hereto attached, marked Exhibit "E" and made a part hereof, as follows: (R. 515)

> "Ordered, Adjudged and Decreed that the Motion To Dismiss for lack of jurisdiction urged by the Defendant in its Supplemental Answer alleging that Plaintiff is engaged in interstate commerce be and

> the same is hereby stricken together with that portion of the affidavit of Dave Herman in support thereof."

Actually, this did not under any mode of legal procedure really pose the question, because no motion to dismiss for lack of jurisdiction had been filed by the Union. Secondly, no evidence had been introduced at the trial as provided in the stipulation between the parties (R. 514) to prove that the hotel was engaged in interstate commerce. No affidavit of Smith was even tendered.

We respectfully urge that the opinion and decision of the Supreme Court of the United States in that case should do no more than reverse the court on a ruling on the pleadings, which of necessity, requires the cause to be remanded for further trial. Actually, the question is not even *posed* or sufficiently *feigned* in the San Marino case.

In the Versailles Hotel case, it appears that the final decree was also prepared by the attorneys for the Union. A photostatic copy of such final decree is hereto attached, marked Exhibit "F", and made a part hereof. The stipulation in re final hearing in that case (R. 393) does not tender the Smith affidavit, although attached as a part of the Union's answer, and therefore, a part of a pleading in the cause, is the affidavit of David Herman (R. 323), which contains sworn statements indicating that the hotel is engaged in interstate commerce (R. 330-331). This pleading was filed on July 6, 1955. The case apparently was tried on application for temporary injunction on affidavits, which is permissible on interlocutory hearings. (R. 340-378)

The stipulation in re final hearing provides that each of the parties would "produce as witnesses the several affiants who have heretofore made affidavits in this cause and that the respective witnesses would testify according to their respective affidavits". This language undoubtedly is broad enough to cover the Herman affidavit which is part of the answer of the Union.

In the Martinique Hotel case, the final decree was also prepared by the Union's attorney. A photostatic copy of said final decree is hereto attached, marked Exhibit "G" and made a part hereof. In that case, hearing on temporary injunction was upon affidavit. Mr. Herman's affidavit was admitted before the court for the purpose of that hearing (R. 1072) and it was sufficient to support the supplemental answer indicating that the Martinique Hotel was engaged in interstate commerce. The stipulation in re final hearing (R. 1084) appears to be broad enough to include the Herman affidavit as a part of the record.

The Union's attorneys prepared the final decree in the Robert Richter Hotel case, as shown by a photostatic copy thereof, hereto attached, marked Exhibit "H", and made a part hereof. This case was also heard on interlocutory application upon affidavit. The Herman affidavit (R. 984) sufficiently indicates that the Robert Richter Hotel was engaged in interstate commerce. The stipulation (R. 1000) is broad enough to include this affidavit as a part of the testimony on final hearing.

It may be that upon a trial of the issue of whether or not these hotels were involved in interstate commerce, within the meaning of the National Labor Relations Act, the respondents will find themselves unable to successfully sustain the issue. This does not justify the denial to them of the right to trial thereon. See, *Saunders v. Shaw, 244 U. S. 317, 37 S. Ct. 638.* In that case, the rule is stated:

> "Probably the majority of the supreme court thought that it was so plain on the uncontroverted facts that the case was within the principal of the Myles Salt Co. Case that to remand it would be an empty form,—a mere concession to technicality. It may turn out so, but we do not see in the record an absolute warrant for the assumption, and therefore cannot be sure that the defendant's rights are protected without giving him a chance to put his evidence in."

CONCLUSION

We respectfully petition the Supreme Court of the United States to modify its opinion and decision in such fashion that the respondents' right be preserved to a trial of the issue of whether or not the hotels severally were involved in interstate commerce.

Respectfully submitted,

THOMAS H. ANDERSON

MARION E. SIBLEY

SAMUEL J. KANNER

THOMAS H. BARKDULL, JR.

PATTON & KANNER
SIBLEY, GRUSMARK, BARKDULL & KING
ANDERSON & NADEAU

Counsel for respondents hereby certify that the above and foregoing Petition for Rehearing is presented in good faith and not for delay.

THOMAS H. ANDERSON

MARION E. SIBLEY

SAMUEL J. KANNER

THOMAS H. BARKDULL, JR.

PATTON & KANNER
SIBLEY, GRUSMARK, BARKDULL & KING
ANDERSON & NADEAU

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY NO. 179,408

STUYVESANT CORPORATION,
a Florida corporation,

Plaintiff

- versus -

HOTEL EMPLOYEES' UNION, LOCAL
NO. 255 (A. F. of L.) et al.,

Defendants

STIPULATION

It is stipulated by and between solicitors for the respective parties that the above captioned cause is at issue, all pending motions are hereby withdrawn, including petition for intervention; that the issues of this cause are contained within the complaint and answer, excepting, however, that prayer for affirmative relief in the answer is withdrawn; that the testimony heretofore taken on behalf of plaintiff and defendants be deemed and considered as testimony at final hearing; that this stipulation be submitted to the Chancellor for entry of final decree based upon the evidence heretofore in[illegible] in the light of the issues made by the complaint and the answer.

WITNESS our hands at Miami, Florida, this 13 day of June, 1956.

SIBLEY & DAVIS
Solicitors for Plaintiff

By _____

GRAMLING & GRAMLING
J. W. BROWN
BEN GETLER
Solicitors for Defendants

By _____

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY NO. 179,408

STUYVESANT CORPORATION,
a Florida corporation,

Plaintiff

- versus -

HOTEL EMPLOYEES' UNION, LOCAL
NO. 255 (A. F. of L.) et al.,

Defendants

FINAL DECREE

COPY

This cause coming on to be heard for final hearing in accordance with stipulation, and the Court being fully advised in the premises, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the temporary restraining order heretofore entered be and the same is hereby made permanent.

DONE AND ORDERED in Chambers at Miami, Florida, this _____ day of June, 1955.

Circuit Judge

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY,
FLORIDA. IN CHANCERY.

NO. 179,408

STUYVESANT CORPORATION, :
a Florida corporation,
:
Plaintiff,
:
vs. STIPULATION
:
HOTEL EMPLOYEES UNION,
LOCAL NO. 255 (A. F. of L.) :
et als.,
:
Defendants.
:
. . . . . .

IT IS HEREBY STIPULATED AND AGREED by and between solicitors for the respective parties that the above-captioned cause is at issue, all pending motions are hereby withdrawn, including petition for intervention; that the issues of this cause are contained within the complaint and answer, excepting, however, that prayer for affirmative relief in the answer is withdrawn; that the testimony and proofs heretofore taken before the Court on behalf of the plaintiff and defendants upon the application for temporary injunction and motion to dissolve, be deemed and considered as testimony and proofs at final hearing; that this stipulation be submitted to the Chancellor for entry of final decree based upon the evidence and proofs heretofore introduced as aforesaid in the light of the issues made by the complaint and the answer.

DATED at Miami, Florida, this ____ day of June, 1955.

GRAMLING & GRAMLING
J. W. BROWN
BEN GETLER
Attorneys for Defendants

By:_____
of counsel.

SIBLEY & DAVIS
Attorneys for Plaintiff

By:_____
MARION E. SIBLEY,
of counsel.

LAW OFFICES
SIBLEY & DAVIS
MIAMI BEACH

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY NO. 180,056-C

ABE ALLENBERG, A. BIRNBAUM
d/b/a MIAMI COLONIAL HOTEL, MORRIS
ROSENBERG, MORRIS FISHER,

Plaintiffs

- versus -

HOTEL EMPLOYEES' UNION LOCAL #255,
(A. F. of L) et al.,

Defendants

STIPULATION

It is stipulated by and between solicitors for the respective parties that the above captioned cause is at issue, all pending motions are hereby withdrawn, including Petition of Intervention; that the issues of this cause are contained within the complaint and answer, excepting, however, that prayer for affirmative relief in the answer is withdrawn; that the testimony heretofore taken on behalf of plaintiffs and defendants be deemed and considered as testimony at final hearing; that this stipulation be submitted to the Chancellor for entry of final decree based upon the evidence heretofore interposed in the light of the issues made by the complaint and the answer.

WITNESS our hands at Miami, Florida, this 13 day of June, 1955.

SIBLEY & DAVIS
SOLICITORS FOR PLAINTIFFS

By_____

GRAMLING & GRAMLING
J.W. BROWN
BEN GETLER
SOLICITORS FOR DEFENDANTS

By_____

GRAMLING & GRAMLING, SUITE 224 SHORELAND BUILDING, MIAMI 32, FLORIDA

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY NO. 180,056 C

ABE ALLENBERG, A. HIRNBAUM,
d/b/a MIAMI COLONIAL HOTEL,
MORRIS ROSENBERG, MORRIS
FISHER,

Plaintiffs

- versus -

HOTEL EMPLOYEES' UNION, LOCAL
NO. 255 (A. F. of L.) et al.,

Defendants

FINAL DECREE

COPY

This cause coming on to be heard for final hearing in accordance with stipulation, and the Court being fully advised in the premises, it is, therefore,

ORDERED, ADJUDGED AND DECREED that the temporary restraining order heretofore entered be and the same is hereby made permanent.

DONE AND ORDERED in Chambers at Miami, Florida, this _____ day of June, 1955.

_____
Circuit Judge

LAW OFFICES
GRAMLING & GRAMLING
SUITE 224 SHORELAND BUILDING
MIAMI 32, FLORIDA

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY,
FLORIDA. IN CHANCERY.

NO. 180,056-C

ABE ALLENBERG, et als. d/b/a MIAMI COLONIAL HOTEL,

Plaintiffs,

vs.

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et als.,

Defendants.

. . . . . .

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between solicitors for the respective parties that the above-captioned cause is at issue, all pending motions are hereby withdrawn, including petition for in ervention; that the issues of this cause are contained within the complaint and answer, excepting, however, that prayer for affirmative relief in the answer is withdrawn; that the testimony and proofs heretofore taken before the Court on behalf of the plaintiff and defendants upon the application for temporary injunction and motion to dissolve, be deemed and considered as testimony and proofs at final hearing; that this stipulation be submitted to the Chancellor for entry of final decree based upon the evidence and proofs heretofore introduced as aforesaid in the light of the issues made by the complaint and the answer.

DATED at Miami, Florida, this ___ day of June, 1955.

GRAMLING & GRAMLING
J. W. BROWN
BEN GETLER
Attorneys for Defendants

By:_____
of counsel.

SIBLEY & DAVIS
Attorneys for Plaintiffs

By:_____
MARION E. SIBLEY,
of counsel.

LAW OFFICES
SIBLEY & DAVIS
MIAMI BEACH

LAW OFFICES
GRAMLING & GRAMLING
SUITE 224 SHORELAND BUILDING
MIAMI 32, FLORIDA

JOHN C. GRAMLING
J. CARRINGTON GRAMLING, JR

JUL 11 1955

July 8, 1955

vii

Mr. Marion Sibley
Attorney at Law
605 Lincoln Road
Miami Beach, Florida

Dear Marion:

I have forwarded a copy of the proposed stipulation in the Saxony case to J. W. Brown for his approval and I trust it meets with yours. If so, I will proceed to get up the affidavits of David Herman, attach the designation cards, and ballots in the Saxony, Casablanca, and Sea Isle cases.

If you have further suggestions concerning the Stipulation, please let me know so that Mr. Brown's office, this office and yours can come to a meeting of the minds to expedite the final termination of these three cases in this jurisdiction.

Cordially,

Carrington Gramling

CG:as

JUL 11 1955

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR DADE COUNTY

IN CHANCERY NO. 178554-D

SAX ENTERPRISE, INC.,

Plaintiff,

-vs-

HOTEL EMPLOYEES UNION, LOCAL NO. 255 (A. F. of L.), et al,

Defendants.

STIPULATION

COPY

IT IS HEREBY STIPULATED AND AGREED by and between solicitors for the respective parties that the above-captioned cause is at issue, all pending motions are hereby withdrawn, including petition for intervention; that the issues of this cause are contained within the complaint and answer (and Supplemental Answer), excepting, however, that prayer for affirmative relief in the answer is withdrawn; that the testimony and proofs heretofore taken before the Court on behalf of the plaintiff upon application for temporary injunction be deemed and considered as testimony of the plaintiff at final hearing; that the attached affidavits and exhibits be taken and accepted by the Chancellor as the testimony and exhibits of the defendants as fully and completely as though said cause was set for final hearing, and the affiants were duly sworn in open court and testifying according to attached affidavits; that this Stipulation and the attached affidavits be submitted to the Chancellor before whom the proofs were taken for entry of final decree based upon the evidence and proofs heretofore and herewith introduced, as aforesaid, in the light of the issues made by the complaint and the answer.

DATED at Miami, Florida, this _____ day of July A. D. 1955.

SIBLEY & DAVIS
Attorneys for Plaintiff

By: _____
Of Counsel

GRAHLING & GRAHLING
J. W. BROWN
BEN GETLER
Attorneys for Defendants

By: _____
Of Counsel

VIII A

OCT 27 1955

LAW OFFICES
GRAMLING & GRAMLING
SUITE 224 SHORELAND BUILDING
MIAMI 32, FLORIDA

JOHN C. GRAMLING
J. CARRINGTON GRAMLING, JR

October 26, 1955

IX

Marion Sibley, Esq.,
Attorney At Law
c/o Sibley & Davis
605 Lincoln Road
Miami Beach, Florida

Dear Marion:

I am sending a copy of the enclosed rough draft of the proposed Stipulation and Affidavit to J.W. Brown, Esq., and to you for the sole purpose of attempting to finalize those cases now pending in the Circuit Court. where the records therein are otherwise complete.

If this meets with your approval and with the approval of Mr. Brown, we should be able to move ahead with reasonable speed.

Cordially yours,

Carrington Gramling

CG:jg
enc.
copy: J.W. Brown

STIPULATION RE FINAL HEARING

IT IS STIPULATED by and between counsel for the respective parties that all testimony and other evidence heretofore introduced in this cause be and the same is hereby reaffirmed for the purpose of Final Hearing, with the single addition however, that at said Final Hearing, the defendants would produce CLARENCE SMITH as a witness, who would testify according to affidavit attached hereto, and it is

STIPULATED that said testimony would be objected to on the grounds that said testimony is immaterial and irrelevant; and it is

STIPULATED that this testimony and the objections thereto be submitted to the Chancellor for ruling thereon, and in the event the objection is sustained, the affidavit shall remain as part of the record as a proffer, and all objections as to form of such proffer be and they are hereby waived.

IT IS FURTHER stipulated that Final Decree be entered by the Chancellor upon the record as now made in the light of this Stipulation.

WITNESS our hands at Miami, Dade County, Florida, this _____day of November, 1955.

SIBLEY AND DAVIS
Attorneys for plaintiff

By:_____

J.W. BROWN and GRAMLING & GRAMLING

By:_____

A F F I D A V I T

Personally appeared before me the undersigned authority CLARENCE SMITH, who being by me first duly sworn deposes and says as follows:

"My name is CLARENCE SMITH, and I am Secretary- Treasurer of HOTEL EMPLOYEES UNION, Local 255. That plaintiffs, in the operation of their hotel are engaged in a business which affects interstate commerce in that thousands of persons are attracted to the State of Florida and come to the State of Florida for the purpose of staying at said hotel; that said thousands of persons come to Florida from various states of the United States outside of Florida, and from various countries outside of the United States by various inter-state and international carriers including airlines such as American Airlines, Pan American Airways, Delta Airlines, National Airlines, Eastern Airlines and various other airlines as well as inter-state railroads, inter-state bus lines, inter-state and international steamship companies, and by passenger automobiles. Said business further is part of "package deal" Arrangements with said various inter-state and International airlines, including Pan American Airways, American Airlines, Delta Airlines, Eastern Airlines, Transworld Airlines, National Airlines, and many others; various inter-state and international steamship companies including Peninsular and Occidental Steamship Companies, Waterman Steamship Corporation, and many other companies; various inter-state railroad companies including Seaboard Railroad Company, Southern Railway System, Florida East Coast Railway, Atlantic Coastline Railroad Company, Pennsylvania Railroad Company, Illinois Central Railroad Company and numerous other companies; and various inter-state bus lines companies including Greyhound Bus Lines Company, Trailway Bus System and various other inter-state bus lins companies. Said "package deals" arrangements whereby persons in states other than the State of Florida

and in countries other than the United States are sold tourist "packages" in said other states and countries, which "packages" include transportation to Miami Beach, Florida, and rooms, food and various services supplied by and at said hotel as an integral part of said inter-state and international sales. The advertsing and selling of the said "package" tours are done jointly by Plaintiffs and said inter- state carriers. All expense incurred in promoting, making and consummating said inter-state and international sales are jointly shared by Plaintiffs, and said inter- state and international carriers. The proceeds of said inter-state and international sales are divided between Plaintiff, as operator of said hotel and said inter-state and international carriers.

Said plaintiffs, as a part of the operation of said hotel, purchases numerous items from outside of the State of Florida and numerous other items within the State of Florida, which have been shipped into the State of Florida. Said Plaintiffs, as a part of the operation of said hotel, sell directly outside of the State of Florida and within the State of Florida for carriage or re-sale, outside of the State of Florida. Said plaintiffs as part of the operation of said hotel, advertise the said hotel by newspapers, trade journals, magazines, radio, television, direct mailings, distribution of pamphlets and literature and various other means in numerous of the states of the United States outside the State of Florida and in various countries outside of the United States.

FURTHER AFFIANT SAYETH NOT.

_____

Affiant

SWORN to and subscribed before

me this day of , 1955.

_____

Notary Public, State of Florida at Large

My Commission Expires: ____

BOOK 1226 PAGE 299

FILED FOR RECORD

FEB 27 11 02 AM 1956

CLK. C.C.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA. IN CHANCERY

NO. 180,677-E

filed this 21 day of Feb A. D. 1956

recorded this 28 day of Feb A. D. 1956

In Chancery Order Book 1226 on Page 299

E. B. LEATHERMAN,
Clerk Circuit Court

By [signature]

THOMAS JEFFERSON, INC., a Florida corporation,

Plaintiff,

-vs-

HOTEL EMPLOYEES UNION, LOCAL NO. 255, (A. F. of L.) et al.,

Defendants.)

FINAL DECREE

THIS CAUSE coming on to be heard on final hearing pursuant to the stipulation of the parties to this cause and the Court being fully advised in the premise, it is

ORDERED, ADJUDGED AND DECREED that the Motion To Dismiss for lack of jurisdiction urged by the Defendant in its Supplemental Answer alleging that Plaintiff is engaged in interstate commerce be and the same is hereby stricken together with that portion of the affidavit of Dave Herman in support thereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Temporary Restraining Order heretofore entered be and the same is hereby made permanent.

DONE AND ORDERED in Chambers, at Miami, Florida this 27 day of February, A.D., 1956.

[signature]
CIRCUIT JUDGE

21-184

Filed this 9 day of Jan A.D. 19 56
recorded this 10 day of Jan A.D. 19 56
in Chancery Order Book 217 on Page 313
E. B. LEATHERMAN,
Clerk Circuit Court
By [signature] D.C.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

IN CHANCERY NO. 180588-I

R. S. LEVY; DANIEL LIFTER and J. J. LANSBURGH, as Trustee for THE ELLEN LANSBURGH TRUST, THE MORRIS LANSBURGH, JR. TRUST and THE LEONARD LANSBURGH TRUST,

Plaintiffs,

-vs-

HOTEL EMPLOYEES UNION, LOCAL NO. 255, (A. F. of L.) et al.,

Defendants.

FILED FOR RECORD
JAN 9 2 31 PM 1956
E. B. LEATHERMAN
CLK. CT. CT. DADE CO. FLA.

FINAL DECREE

THIS CAUSE coming on to be heard upon final hearing pursuant to the Stipulation of the parties to this cause, and the Court being fully advised in the premises,

IT IS THEREUPON ORDERED, ADJUDGED AND DECREED that the restraining order heretofore rendered against the defendants, and each of them, which order is recorded in Chancery Order Book 1217, Page 58, in the records of the Clerk of the Circuit Court of Dade County, Florida, be and the same is hereby made permanent. The injunction bond filed herein is hereby cancelled and the principal and surety released of all liability thereunder. The costs of this cause hereby assessed in the sum of $52.50 are taxed against the defendants, for which let execution issue.

DONE AND ORDERED In Chambers, Miami, Florida, this 6th day of December, 1955.

Robert L. Floyd
CIRCUIT JUDGE

31 - 293

XIV

BOOK 1217 PAGE 538

FILED FOR RECORD

DEC 23 11 .. AM

CLK. CIR. CT. DADE CO. FLA.

E

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA IN CHANCERY

NO. 180445

MARTINIQUE HOTEL, INC., A Florida Corporation,

Plaintiff,

-vs-

HOTEL EMPLOYEES UNION, LOCAL #255, (A. F. of L.) et al.,

Defendants.

FINAL DECREE

23 Dec 55
27 Dec 55
In Chancery 1217 538
Clerk Circuit Court
By G Boyer D.C.

THIS CAUSE coming on to be heard upon final hearing pursuant to the Stipulation of the parties to this cause, and the Court being fully advised in the premises,

IT IS THEREUPON ORDERED, ADJUDGED AND DECREED that the restraining order heretofore rendered against the defendants, and each of them, which order is recorded in Chancery Order Book 1189, Page 525, in the records of the Clerk of the Circuit Court of Dade County, Florida, be and the same is hereby made permanent. The injunction bond filed herein is hereby cancelled and the principal and surety released of all liability thereunder. The costs of this cause hereby assessed in the sum of $20.07 are taxed against the defendants, for which let execution issue.

DONE AND ORDERED in Chambers, Miami, Florida, this 23rd day of December, 1955.

Luther A. Campbell
CIRCUIT JUDGE

Filed this 9 day of Jan A.D. 1956
recorded this 10 day of Jan A.D. 1956
in Chancery Order Book 1219 on Page 389
E. B. LEATHERMAN,
Clerk Circuit Court
By G. Boyer D.C.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA IN CHANCERY

NO. 180412-D

MORRIS LANSBURGH and DANIEL LIFTER,

Plaintiffs,

-vs-

HOTEL EMPLOYEES UNION, LOCAL NO. 255, of the American Federation of Labor, et al.,

Defendants.

FINAL DECREE

FILED FOR RECORD
JAN 9 2 31 PM 1956
E. B. LEATHERMAN
CLK. CT. CT. DADE CO. FLA.

THIS CAUSE coming on to be heard upon final hearing pursuant to the Stipulation of the parties to this cause, and the Court being fully advised in the premises,

IT IS THEREUPON ORDERED, ADJUDGED AND DECREED that the restraining order heretofore rendered against the defendants, and each of them, which order is recorded in Chancery Order Book 1189, at Page 522, in the records of the Clerk of the Circuit Court of Dade County, Florida, be and the same is hereby made permanent. The injunction bond filed herein is hereby cancelled and the principal and surety released of all liability thereunder. The costs of this cause hereby assessed in the sum of 52 50/100 are taxed against the defendants, for which let execution issue.

DONE AND ORDERED in Chambers, Miami, Florida, this 6th day of December, 1955.

Charles A. Carroll
CIRCUIT JUDGE

Sup